

# Sexual Violence Against Female Labour in the Perspective of Employment Law and Legal Justice

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## ABSTRACT

*This article aims to examine legal protection for workers who are victims of sexual violence in the workplace, as well as the legal implications for perpetrators of sexual violence from the perspective of Criminal and Employment Law in Indonesia. The research method used is normative research. The research results show that legal protection for workers from sexual harassment is regulated in various existing regulations. One aspect that is regulated is the right of witnesses and victims to obtain security protection for themselves and their families, as well as freedom from threats related to the testimony they give. Furthermore, the procedures for resolving cases of sexual harassment in the workplace are limited to legal sources in the form of the Employment Law, through deliberation, negotiation, and if no agreement is reached, filing a lawsuit for termination of employment. This article finds that there is still a lack of focus in highlighting the importance of legal protection for victims of sexual harassment in the workplace to ensure their safety and comfort, including knowledge of the procedures for resolving these cases, in order to achieve optimal legal justice. Focusing on a better understanding of rights and related legal procedures is essential in ensuring adequate protection for workers who are victims of sexual violence.*

**Keywords:** Female Labour; Sexual Violence; Labour Violence;

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## INTRODUCTION

Legally, sexual violence is any undesired sexual behavior or behavior. The emergence of the term "sexual violence" and women's awareness of their rights and status are interrelated. This is because the issue of sexual harassment cannot be separated from gender issues. Violence against women initially entered the labor market and only became widely known in 1974 when feminists used the term "sexual violence" as a nickname for the perpetrators. (Fitria et al., 2023) According to CATAHU data from the National Commission on Violence Against Women in 2022, sexual violence is currently a topic of discussion, especially due to the increasing number of such



cases. Please find below the revised version of the text (2012-2021), 2021 was recorded as the year with the highest number of cases of Gender-Based Violence (GBV), with an increase of 50% compared to 2020, resulting in a total of 338,496 cases. This figure is even higher than the GBV statistic before the pandemic in 2019 (Yentriyani, 2024).

The Commissioner of the National Commission on Violence Against Women also added that the amount of violence against women continued to increase between 2008 and 2019. From 2011 to 2019, there were 46,698 cases of sexual violence that occurred in the personal and public spheres against women (Aminah, 2021). The locations where sexual violence occurs vary, starting from the nearest residence, school, Islamic boarding school, public places, and including the work environment. One of the locations where sexual violence often occurs is the work environment. This is in line with what the National Commission on Violence Against Women Commissioner, Veryanto Sitohang, said that the level of sexual violence in the work environment has drastically increased. From 2017 to 2020, there were 92 cases of gender-based violence against women, while in 2021 it increased to 116 cases (Situmorang, 2022). A safe work environment is conducive to establishing a strong and productive relationship between management and the workforce. To achieve such a work environment, it is crucial to ensure that there is no discrimination or violence in the workplace. Everyone in the workplace is highly vulnerable to all forms of violence, including sexual violence and intimidation. Sexual violence in the workplace differs from sexual violence in general because harassment occurs directly in the workplace, which is closely tied to earning a living (Makhali & Seta Aji, 2022).

Based on their opinions, acts of sexual violence can occur due to incongruent power relations, where women have an inferior position. The unequal power relationship between men and women is not only visible in physical form, but also in the political, social, economic, and governmental realms, where men have a larger share of power than women. Various forms of sexual violence in the workplace are influenced by the characteristics of the perpetrators, with most of them being men who hold higher positions. It is in this context that acts of sexual violence are committed by employers against their employees, taking advantage of their power. These actions carried out by employers are usually accompanied by promises of promotions, salary increases, or other advantages. Conversely, there can also be threats of demotion or termination, as well as a work environment culture dominated by masculine men (Afifah, 2017).

Women are always placed in a lower position than men. This is inseparable from the patriarchal views that are firmly embedded in society. Patriarchy comes from the word patriarchate, meaning a structure that places the role of men as the sole ruler, central to everything (Rokhmansyah, 2016). According to the "Committee on the Elimination of Discrimination Against Women" (CEDAW), discrimination can perpetuate violence against women. For example, traditional beliefs that position women in a subordinate status or below men (Kholiq & Wibowo, 2016). Workers will try to contribute to the company or place of work to the

best of their abilities as a sign of their dedication. However, these efforts to contribute to the workforce are often misused by leaders or superiors. Female workers are particularly vulnerable to experiencing such conditions. This is because of the power dynamics between superiors and workers, where superiors typically hold a more dominant position than workers. Additionally, gender plays a role as women are often positioned below men.

This is also supported by Never Okey Project data presented by Imelda Riris (Pijar, 2020). The results of a 2018 online survey showed that 36% of perpetrators of sexual violence were bosses or senior colleagues. Female workers often receive threats of termination of employment if they refuse to be subjected to sexual violence. With the difficult economic situation, this certainly makes it more challenging for them to take a stand. If this issue is not addressed seriously, it will undoubtedly have a detrimental impact, especially on women who are victims of sexual violence. The negative effects of sexual violence, as explained by Siti Aminah, include the impact on physical and psychological health, the violation of Human Rights (HAM), disturbances in social relations, as well as economic consequences. Furthermore, women cannot fulfill their optimal roles as citizens in family life, society, nation, and the state (Aminah, 2021).

Therefore, there is a need for protection that can be given to female workers in carrying out their work activities in the workplace. This has also been regulated in Employment Law Number 13 of 2003, Article 86, paragraph (1), which states that workers have the right to protection of morals and decency (Law Number 13 of 2003 concerning Employment). One thing that can be pursued is through criminal law policy, namely formulating acts of sexual violence as part of criminal offenses and providing threats of punishment to perpetrators. With the passing of the Sexual Violence Crime Law, there has been a significant breakthrough in overcoming sexual violence. However, whether the policy, in this case, the formulation of the offenses that have been established in the statutory regulations, has provided adequate protection for workers, requires further in-depth study.

## **METHOD**

Based on the focus of the problem, this research uses a type of normative legal research. As is usual in normative legal research, it is necessary to determine an approach, namely a statutory approach and a conceptual approach. The data used are secondary data, consisting of primary legal materials and secondary legal materials. Next, the data has been inventoried, classified, and analyzed descriptively-prescriptively (Arliman S, 2018).

## ANALYSIS AND DISCUSSION

### A. Criminal Law and Employment Law Policies to Protect Female Workers from Sexual Violence

The aim of legal protection, as stated in Article of the Employment Law Number 13 of 2003, is to provide protection to workers in achieving prosperity and improving the welfare of workers and their families. Considering the important role workers or employees play in a company, the objectives of worker protection laws must be achieved effectively. There is no need to differentiate between workers because, basically, every worker has the right to protection against grammar, spelling, and punctuation errors. (Pakpahan & Sihombing, 2014). In addition, because labor is at risk, if there is a balance between rights and regulation in law, violations will be considered as simple mistakes, something that can be resolved through deliberation (Seweryński, 2013), this is certainly ironic because, as defenders of human rights, the government has not shown the political will to protect workers, repeatedly (Akee et al., 2019; Francis et al., 2018).

Women have the right to enjoy and protect human rights and fundamental freedoms in all areas. However, violence against women is a deeply inhumane act. Indeed, in the 21st century, society has entered an era of globalization, and the discourse on human rights has developed. But, gender discrimination against women still seems to be deeply rooted in corporate culture. This divisive view ultimately makes it difficult for women to access their rights, as society and the government perceive them as victims of crime. Sexual violence is, unfortunately, a common reality in today's society (Njoki, 2021), and violence against women often occurs everywhere, especially sexual harassment, rape, and prostitution (Tiwari et al., 2018), sexual harassment, such as that which occurs in the workplace, is a serious issue that affects many individuals. It encompasses unwanted advances, comments, or actions of a sexual nature that create a hostile or uncomfortable environment for victims. It is important to address this problem and take effective measures to prevent it (Gedikli et al., 2023).

Sexual harassment is a crime against modesty. The Minister of Labor has issued specific guidelines on how to prevent sexual harassment and violence in the workplace, which are defined as follows: "Any unwanted sexual behavior, requests for sexual favors, verbal or physical behavior or gestures of a sexual nature, or other sexual behavior that makes the recipient feel humiliated or threatened."

From this explanation, the author will outline several legal protections that will be provided to victims of sexual harassment, specifically as follows:

1. By providing adjustments and compensation, victims of sexual harassment are individuals who are harmed and affected by someone's actions. Therefore, the protection of victims is an absolute necessity because their rights are violated. Protection, as intended in Article 1 Number 5 Number 13 of 2006 relating to the protection of witnesses and victims, states that efforts to uphold rights and provide support to ensure a sense of

security for victims must be led by the Witness and Victim Protection Institution (LPSK) or other organizations in accordance with the determined regulations. Article 7 of Law Number 31 of 2014, which amends Law Number 13 of 2006 regarding the protection of witnesses and victims, regulates that victims, through LPSK, have the right to apply to court in the form of compensation.

- a. The Right to Compensation for Serious Human Rights Violations.
- b. The right to restitution or compensation against the perpetrator of the crime
- c. Decisions on restitution and compensation are made by the court
- d. Other provisions regarding compensation and compensation are regulated by government regulations.

## 2. Medical assistance or advice

According to Law No. 31 of 2014, an amendment to Law No. 13 of 2006 concerning the protection of witnesses and victims, victims of harassment and/or sexual violence are also given medical assistance and social and mental rehabilitation support. This assistance is a service provided by the Witness and Victim Protection Agency to victims and/or witnesses. Requests for medical assistance and psychosocial rehabilitation can be submitted by victims and their families.

## 3. Legal assistance

Legal aid is a form of assistance for crime victims, specifically in Indonesia. This support is mainly provided by non-governmental organizations (NGOs). Legal assistance to victims of crime must be provided, whether requested or not by the victim. It is important that most victims affected by these crimes have some knowledge of the law, as attitudes towards the inability to provide adequate legal assistance to crime victims can worsen the situation.

As a form of legal certainty for workers in Indonesia, several regulations are linked to sexual harassment in the workplace.

### a. Human Rights Law no. 39 of 1999

Indonesia is a legal state based on Pancasila, the nation's philosophy of life, and has an obligation to participate in efforts to uphold human rights in the world. Sexual harassment in the workplace can be seen as a form of human rights violation that occurs in our everyday environment.

### b. Law no. 31 of 2014 amendments to Law no. 13 of 2006 concerning Witness and Victim Protection.

### c. Law no. 13 of 2003 concerning employment.

For acts that are contrary to the provisions of the law, this law serves as the legal framework for labor protection to guarantee workers' basic rights, equal opportunities,

and treatment without any form of discrimination on any basis. The aim is to achieve worker welfare. (Wahyudi, 2016).

- d. Law Number 2 of 2004 concerning Employment Relations Regulations.

To address the issue of sexual harassment in the workplace, a possible solution is to report the incident to a superior or labor union for monitoring. This can lead to mediation through deliberation or negotiation involving all relevant parties, including the perpetrator, victim, or any other individuals connected to the superior or company representative, as stated in Article 3, paragraph (1). If deliberations fail to reach an agreement, the party feeling disadvantaged can file a lawsuit with the Industrial Relations Court, in accordance with the provisions of Article 5 of this Law.

- e. The Criminal Code is a criminal offense against immoral acts

The act is contrary to traditional values in society, meaning it violates values that are in accordance with the nation's personality. Crimes against morality itself violate morality (*zedelijkheid*). A fundamental element of sexual harassment is the denial or rejection of any form of attention of a sexual nature.

The Criminal Code in Indonesia does not have a specific specialist law regarding the phenomenon of sexual harassment. As a result, the law relies on the provisions stated in the Criminal Code. Sexual harassment itself is considered a criminal offense, and it is defined and punishable according to the terms and punishments mentioned in the Criminal Cod

In cases of violence, whether occurring at home, at work, or in the community, such as physical or sexual violence or rape, where a woman is the victim, it is first suspected that these women contributed more or less to the events that occurred to them (victim participation) (Gultom, 2014). To eliminate discrimination against these workers, we need gender equality, because gender equality means that the country takes steps to ensure equal rights between men and women. Workers who are in contact with women victims of sexual violence who are economically disadvantaged (for example, because they do not have adequate knowledge) may face discrimination. In 1981, the Convention on the Elimination of Discrimination Against Women (CEDAW) recognized the biological or natural differences between women and men. Since conditions and positions are different, the convention contains a number of obligations that the state must fulfill for gender equality. The state is required to eliminate violence and discrimination by changing and compiling laws that regard women as equals before the law, in work, and in their rights as citizens (Gultom, 2010).

According to research conducted by Mahardhika Women in the Workplace, 437 and 773 female workers were interviewed and identified as victims of verbal and physical harassment. The most frequently cited actions included body touching, sexual intercourse, and sexual teasing/seduction. It is worth noting that victims often experience harassment multiple times, with

some even experiencing it up to five times. It is common for these incidents to be dismissed as rumors, jokes, or attempts to seek attention. The vulnerability of female workers to sexual harassment is evident due to the daily encounters with perpetrators in the workplace. Despite the high number of victims, only 26 out of 473 individuals reported the harassment either through the company's notification box or directly to their superiors. The low reporting rate can be attributed to the embarrassment victims feel about their experiences and the understanding and acceptance often shown towards such actions.

There are several regulations regarding sexual harassment (*quid pro quo*) in the workplace to provide legal certainty for Indonesian workers, including.: (Gultom, 2010)

1. The 1945 Constitution of the Republic of Indonesia

As we already know, one of the goals of the Indonesian state is to achieve general prosperity, as stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. The realization of a sense of security and peace in realizing workers' constitutional rights is one concrete form of national effort to safeguard the lives of the Indonesian people. All workers, regardless of position or other special status, have the same rights to work and a decent living, as regulated to by Article 27, paragraph (1), which states, "every citizen has the same position in terms of legal consequences and existence in government, and therefore, he is obliged to obey the law and the government without exception." Paragraph (2) of the 1945 Constitution of the Republic of Indonesia also reinforces this statement. These articles show that there is no difference in status in law or government for all citizens, whether women or men, adults, workers with low status, children, will still have human rights that need to be protected. One of them is the implementation of the right to protection from violence and discrimination. The resolution of sexual harassment cases in Indonesia is still very low, so penal or non-penal solutions are needed to ensure that perpetrators receive appropriate treatment.

2. Law Number 39 of 1999 concerning Human Rights

Indonesia is a legal state based on Pancasila, the nation's philosophy of life, and is obligated to participate in efforts to protect human rights worldwide. Sexual harassment in the workplace can be seen as a form of human rights violation that occurs in our daily lives. Based on the provisions of Article 33 of the Human Rights Law, it is stipulated that as humans, we have the same right to avoid torture or any other immoral treatment that degrades human dignity. Additionally, every human being, in accordance with Article 38, paragraph (1) of the Human Rights Law, has the right to obtain fair and decent work. Obviously, sexual harassment in the workplace contradicts the principles of decent employment enshrined in these human rights laws.

3. Law Number 13 of 2003 concerning Employment

Looking at the phenomenon of sexual harassment in the workplace, the legal basis is Law Number 13 of 2003 concerning Employment (hereinafter abbreviated as the Employment Law). The implementing department that plays an important role in achieving the national development goals of Indonesia includes labor or workforce. Thus, workers are part of the employment Revised version:

Looking at the phenomenon of sexual harassment in the workplace, the legal basis is Law Number 13 of 2003 concerning Employment (hereinafter abbreviated to the Employment Law). The implementing department which plays an important role in achieving the national development goals of Indonesia includes labor or workforce. Thus, workers are part of the employment system, and their rights must also be taken into account. The provisions in Article 86 paragraph (1) of the Manpower Law regulate that every laborer or worker has the right to obtain occupational health protection, which is realized by implementing occupational safety and health efforts by the company. Sexual harassment is a form of immoral behavior because it violates the ethical values that apply in Indonesia. Therefore, it can be said that the meaning of protecting workers from sexual harassment that occurs in the workplace is also included in workers' self-protection. When sexual harassment in the workplace is carried out by co-workers or employees, this unethical behavior constitutes a serious violation as intended in Article 158 paragraph 1 letter d. Sexual harassment in the workplace, if interpreted grammatically, can be classified as part of unethical behavior, so the solution is the dismissal of the perpetrator. However, when implementing layoffs, companies must first pay attention to evidence that sexual harassment has occurred in the workplace. This is in accordance with the provisions of Article 158 paragraph (2). Evidence can be obtained in the form of a direct confession from the person who committed sexual harassment, an incident report by the authorities regarding sexual harassment in the workplace, which is supported by at least two witnesses.

4. Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes

When faced with a phenomenon related to sexual harassment in the workplace, the solution is to report the case to the manager or labor union and follow up so that deliberations or negotiations can be held with the parties concerned, be it the perpetrator, the victim, superiors, or representatives of the workplace company, as intended in Article 3, paragraph 1.

5. Indonesian Criminal Code (KUHP)

The Criminal Code explicitly provides for punishment for sexual violence and harassment, prohibiting indecent acts in public and threats of violence for sex. This provision forms the basis for criminal complaints of sexual harassment in the workplace.



The victim or anyone else who is aware of the incident must file a formal complaint. If the victim experiences sexual harassment or harassment by the business owner (entrepreneur) or someone outside the business, they can report it to the police. Resolving cases of sexual violence against female workers can be done through the courts and falls under criminal law based on the provisions of the Criminal Code (KUHP) (Awaliyah, 2014).

Unethical crime is an act that is contrary to the moral values of society and means violating the values that are in accordance with the personality of the state. Crimes against morality can actually be divided into two different types. Firstly, there is the crime of assaulting civility (zedeni), which is generally associated with pure values and corporate customs recognized for certain crimes. Criminal acts are regulated in Articles 300 to 303 of the Criminal Code and Articles 536 to 547 of the Criminal Code. Furthermore, the second category is decriminalization crimes (zedelijkheid), and the concept actually differentiates them from more specific crimes, namely those involving sexual acts. The criminal acts are regulated in Articles 281 to 299 of the Criminal Code and the articles are regulated in Articles 532 to 535 of the Criminal Code.

6. Book III of the Criminal Code starting from Article 281 to Article 299

Crimes that are included as crimes of morality, namely crimes of morality related to sexual matters, are regulated in Book III of the Criminal Code, starting from Article 281 to Article 299. The following is an overview of the corrected version:

Crimes involving the violation of religious order, pornography, underage pornography, self-help pornography, adultery, rape for sexual intercourse, sexual relations with unmarried women under the age of 15, and crimes against women married before the age of 15 are all serious offenses. Furthermore, crimes associated with underage marriage, rape, obscenity, acts that insult honor and decency, as well as crimes related to the distribution of obscene material, are highly condemned. Any criminal acts that involve the exploitation of women under the age of 15, or those who are not yet ready to marry, such as rape and molestation, inflict significant harm on the victims. If you are under 15 years of age, or have not yet reached the age of majority, it is crucial to protect and support your well-being. This includes preventing crimes like rape, sexual battery, incitement to lewd behavior with a minor, crimes of lewd conduct with a minor, and discouraging a lifestyle that supports obscenity, human trafficking of women and minors, and the crime of abortion.

Regarding protection for victims of sexual harassment, Gunawi Kartasapoetra stated that: (Hakim & Sumarno, 2023; Mardiansyah, 2020)

- a. Ethical standards must be prioritized so that female workers are not influenced by negative behavior of the opposite sex, especially if they work at night.

- b. Workers generally perform complex work depending on the nature and subtlety of their energy.
- c. There are workers who are single, there are those who are married and have families, they have their own family burdens that must be carried out too.

Basically, Article 86, Paragraph (1) of Law no. 13 of 2013 concerning Manpower contains legal protection provided by the government to workers who are victims of sexual harassment. The article reads as follows: 'Every worker has the right to obtain protection regarding: (a) work safety, (b) immorality and decency, (c) treatment that is in accordance with human dignity, dignity as well as religious values.' Based on the contents of paragraph (1), it is clear that workers have the right to receive protection for work safety, both physical and non-physical, from the moment they leave for work, at the workplace, and until they return home. This protection also extends to the workers' personal safety, comfort, and safeguarding them from sexual harassment

Apart from Article 86 of Law No. 13 of 2013 concerning Employment and several other legal regulations mentioned above, there are also several legal regulations in Indonesia that regulate the protection and prevention of workers from sexual harassment. (Munandar & Homzah, 2010)

1. Law No. 80 of 1957 concerning Ratification of the ILO Convention No.100 of 1951 concerning equal wages for male and female workers for the same work
2. Law No. 21 1999 Concerning Ratification ILO Convention No. 111 1958 regarding discrimination in employment and position.
3. The opening of the 1945 Constitution in the fourth paragraph states that one of the aims of the Indonesian state is to promote general welfare.

The Ministry of Manpower and Transmigration has issued Ministerial Circular Letter (SE) No. SE.03/MEN/IV/2011 concerning guidelines for sexual harassment in the workplace. This guideline states that women are a group vulnerable to sexual harassment, and that sexual harassment is often carried out by abusing power, making it difficult for victims to defend themselves. However, this guideline is not binding; it serves only as a guide or reference for employers, workers, and agencies responsible for the field of employment to prevent and effectively handle sexual harassment.

According to Prijadi Santosa, one of the efforts being made is to establish a complaint room. Female workers can use the complaint room to report incidents that have happened to them and have their cases resolved. Efforts to promote general welfare are realized by providing guarantees to citizens for decent work and a respectable standard of living, as stated in Article 27 (2) of the 1945 Constitution. Criminal law policy can also be referred to as "Criminal Law Politics" in foreign terms. In other words, criminal law politics is often known as "Penal Policy," "Criminal Law Policy," or "Strafrechtspolitik." According to Sudarto, criminal law politics refers to "...the way in which to try, create, or formulate good criminal legislation." Therefore, implementing criminal law politics

means striving for the best criminal legislation outcomes, fulfilling the requirements of justice and efficiency (Kenedi, 2017).

Efforts and policies to create good criminal law regulations cannot be separated from the aim of preventing crime. Crime prevention efforts are an integral part of protecting society (social defense) and achieving social welfare (Kenedi, 2017). Muladi, in his book, also mentioned that the formulation of offenses in law is an effort to combat crime (Usman, 2011). The policy of using criminal law as a means of combating crime is carried out through a systematic process, namely through what is known as criminal law enforcement in the broadest sense. Criminal law enforcement is seen as a policy process, which essentially involves policy enforcement that goes through several stages as follows:

1. The formulation stage, namely the stage of inabstracto law enforcement by the law-making body, is also known as the legislative policy stage.
2. Application stage, namely the stage of application of criminal law by law enforcement officials from the police to the courts, also known as the judicial policy stage.
3. Execution stage, namely the stage of concrete implementation of criminal sentences by criminal implementing officers. This stage can be called the executive or administrative policy stage.

As the author explained above, one form of crime prevention effort is to create policies, which, in Muladi's view, are in the formulation stage. Typically, policy formulation from a criminal law perspective contains prohibited acts and the threat of punishment.

This punishment fulfills the objectives of punishment (Saputra, 2020):

1. To scare people so that they don't commit crimes, either by scaring many people (general preventie) or by scaring certain people who have committed crimes so that they won't commit crimes again in the future (special preventie); or
2. To educate or correct people who commit crimes so that they become people of good character who are beneficial to society.

The aim of punishment is to carry out a supporting function of the general purpose of criminal law, which is to achieve the ultimate goal of realizing the welfare and protection of society. This encompasses social defense and social welfare and is oriented towards the aim of safeguarding society to achieve social welfare (Irmawanti & Arief, 2021). Therefore, the formulation of the offense made by the authorities is aimed at providing protection to the community, specifically workers in this discussion. Generally, the formulation of the offense can be found in the Criminal Code, commonly abbreviated as the Criminal Code. In certain cases, it can also be found in separate laws outside the Criminal Code. For example, the Sexual Violence Crime Law, abbreviated as the TPKS Law.

Regarding obedience in adhering to these regulations, it can be observed in Friedrich Julius Stahl's teaching on God's sovereignty. Stahl stated that the state is the entity that represents God

in the world and holds complete power to maintain legal order. The theory of community agreement argues that the state's monopoly authority is based on the will of humanity itself, as people desire peace and order in society. They pledge to obey all provisions established by the state and, conversely, accept punishment if their actions are deemed disruptive to societal order. They have entrusted the state with the power to penalize those who violate order. Similarly, the theory of state sovereignty asserts a stronger position, as it posits that only the state itself, being sovereign, can punish individuals attempting to disturb order. The state, as the creator of laws, holds jurisdiction over all matters. With regard to punishment, the laws crafted by the state are characterized as criminal law (Wiarti, 2017).

Thus, the state has the right to take action against violations of regulatory compliance made by its constituents, by imposing penalties. The demand for criminal acts to be explicitly stated in a law is a teaching of the principle of legality, also known as the Principle of Legality. This principle asserts that no act can be deemed prohibited or punishable unless it is established in legislation beforehand. This principle, known in Latin as "nullum delictum nulla poena sine praevia lege" (no offense, no crime without prior regulations), safeguards the rights and liberties of individuals (Widayati, 2016). The application of the principle of legality has two functions: first, the function of protection - meaning that there should be no punishment except as prescribed by law. In this case, criminal law safeguards people against the government's unlimited exercise of power. Second, the instrumental function ensures that all criminal acts are prosecuted, even those involving grammar, spelling, and punctuation errors (Widayati, 2016). The principle of legality is one of the most important parts of the law because it encompasses philosophical values that underlie the formulation of each article. Ensuring the correct formulation of the principle of legality guarantees legal justice by addressing grammar, spelling, and punctuation errors (Khasan, 2017).

The understanding of sexual violence, as contained in the TPKS Law, encompasses any act that fulfills the elements of a criminal act as regulated in this law, as well as other acts of sexual violence as specified in the law (RI Law Number 12 of 2022 concerning Actions Criminal Sexual Violence). Furthermore, the law explains that the forms of criminal acts of sexual violence include non-physical harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence (RI Law Number 12 of 2022 concerning Actions Criminal Sexual Violence). Currently, the understanding of sexual violence is increasingly widespread, considering that this article is limited to obscene acts and rape. What will be discussed later is related to these two aspects. In the Criminal Code, this act is categorized as a crime against morality, which is regulated in one chapter containing twenty-four articles. Morality can be understood as relating to good customs, specifically concerning a person's genitals (sex). (Wowiling, 2021).

Article 5 of Law Number 31 of 2014 concerns Amendments to Law Number 13 of 2006 regarding the Protection of Witnesses and Victims. Witnesses and victims have the following

rights: 1. Obtain protection for their personal security, family, and property, and be free from threats related to their testimony, whether given, being given, or already given; 2. Participate in the process of selecting and determining forms of security protection and support; 3. Provide information without any pressure; 4. Have access to a translator; 5. Be free from entrapment through questions; 6. Receive information regarding case developments; 7. Receive information regarding court decisions; 8. Receive information in the event that the convict is released; 9. Maintain anonymity; 10. Obtain a new identity; 11. Obtain temporary residence.; 12. Obtain a new residence; 13. Receive reimbursement for transportation costs based on needs; 14. Obtain legal advice; 15. Receive temporary living expense assistance until the protection period ends; 16. Receive general assistance.

The rights as intended in paragraph (1) are given to witnesses and/or victims of criminal acts in certain cases in accordance with the LPSK Decision. Apart from witnesses and/or victims, the rights granted in certain cases as intended in paragraph (2) can also be extended to witnesses, perpetrators, reporters, and experts, including individuals who can provide information related to a criminal case even if they have not personally witnessed or experienced it. As long as the person's statement is related to a criminal act, they are eligible. Article 6 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006, which pertains to the Protection of Witnesses and Victims, guarantees these rights. Victims of serious human rights violations, victims of criminal acts of terrorism, victims of criminal acts of trafficking in persons, victims of criminal acts of torture, victims of criminal acts of sexual violence, and victims of serious abuse, in addition to having the rights as intended in Article 5, also have the right to receive medical assistance, as well as psychosocial and psychological rehabilitation assistance. The assistance mentioned in paragraph (1) is provided based on the LPSK Decree.

## **B. Indonesia Legal Consequences for Perpetrators of Sexual Harassment in the Workplace When Seen from Employment Law and Criminal Law in Indonesia**

Criminal liability is also known as legal liability or criminal responsibility. The concept of criminal responsibility encompasses not only a legal issue but also a matter of concern for moral values and shared dignity held by a society or social group. It is crucial for the prosecution to do the right thing in this regard. Maintaining working relations, especially between workers/laborers and management, is essential for fostering smooth communication based on honesty between workers/laborers and entrepreneurs. By maintaining a safe, effective, and productive working atmosphere, workers/laborers' comfort while carrying out their work can be achieved. To preserve these conditions, it is imperative to prevent unethical behavior in the workplace.

Regarding the issue of sexual harassment in the workplace that occurs in Indonesia, there are currently no specific regulations. However, under the provisions of the criminal law, such as articles 281, 285, 289, 294 paragraph (2), and 315 of the Criminal Code, which regulate the

handling of cases related to sexual harassment, individuals can ultimately face punishment in the form of imprisonment or fines, depending on the severity of the harassment committed. Therefore, these provisions can serve as a basis for regulating and addressing cases of sexual harassment.

1. Chapter 281
  - 1) Someone who deliberately violates decency in a public place.
  - 2) Anyone who violates civility in front of others who do not have their free will.
2. Chapter 285  
Any person who, by force or threat of violence, forces a woman to have sex outside of marriage, is threatened with rape with a maximum prison sentence of twelve years.
3. Chapter 289  
Any person who, by force or threat of force, forces someone to commit or allows someone to commit a pornographic act against themselves, is threatened with violating decency for a maximum of nine years. prison sentence.
4. Chapter 294 paragraph (2)  
An official who commits an obscene act against a person who is his subordinate, or against a person entrusted to his care or control, is threatened with imprisonment for a maximum of seven years.
5. Chapter 315  
Any insult, which is intended not to demean or blaspheme in writing, is committed against a person in public, orally or in writing, or in front of that person, orally or in writing or in action. As well as sending or receiving it in writing, is punishable by a maximum imprisonment of four weeks or a maximum fine of IDR 4,500 (four thousand five hundred rupiah).

If you examine the provisions of the Criminal Code mentioned above, you will find that the crime of sexual harassment is categorized into multiple forms, each associated with its respective punishment.

- a. First, sexual harassment with violence or sexual harassment by officials is a violation that carries the most serious sanctions. This is because, in addition to sexual harassment itself, the perpetrator also resorts to violence. Offenders can be sentenced under Article 285, which carries a maximum prison sentence of 12 years, or Article 289, which carries a maximum prison sentence of nine years. In cases where an official commits sexual harassment against their subordinates, Article 294 paragraph 2 can be invoked with a maximum prison sentence of seven years.
- b. Second, physical sexual harassment (without violence or threats of violence), with an average sentence, refers to incidents where the perpetrator does not employ elements of violence such as groping the genitals, breasts, or other body parts, as well as visually exposing the genitals or engaging in sexual intercourse in public. Such acts are

punishable under Article 281, with a maximum imprisonment of two years and eight months or a maximum fine of IDR 4,500 (four thousand five hundred rupiah).

- c. The third is the lightest in terms of punitive action because the perpetrator's actions are verbal or spoken, usually in the form of behavior such as sexual advances made towards victims, most of whom are women. Verbal sexual harassment can be classified as light insults and can be based on Article 315, after which the perpetrator can be punished with imprisonment for a maximum of four months and two weeks or a fine of up to IDR 4,500.

This act of sexual harassment can be punished in accordance with the provisions of the Criminal Code regarding unethical acts. This behavior is closely related to acts of physical violence, which are generally regulated in the Criminal Code. Perpetrators of harassment include people in the factory and outsiders/unknown individuals. The insiders who carry out the most harassment are mechanics, operators, and supervisors. Meanwhile, the outsiders/unknown individuals are usually motorcycle taxi drivers and warehouse employees. Judging from the identified perpetrators, gender relations and power dynamics are the main factors contributing to the occurrence of sexual violence in the workplace. The harassment experienced by female workers is actually more often carried out by co-workers, both mechanics and operators. This shows the gender inequality experienced by female workers in their workplace.

For effective work implementation, it can be regulated in company regulations or collective work agreements as work conditions that must be fulfilled. If not implemented, sanctions will be given in the form of disciplinary actions. Treatment related to sexual harassment is classified as illegal and can result in sanctions. The basic element of sexual harassment is the aversion or rejection of any form of sexual interest. If the recipient of the act does not consent to it, the act may be considered sexual harassment, as required by the provisions regarding adultery in the Criminal Code (KUHP). In general (*Lex Generalis*), the Criminal Code can also be used as a basis for the threat of punishment, as regulated in Obscenity Articles 289-299.

In the Manpower Law, the resolution of cases of sexual harassment in the workplace is through deliberation and negotiation. However, if no agreement is reached, the perpetrator will be dismissed through the industrial relations court. If sexual harassment is carried out by co-workers, it can be handled in accordance with the provisions of Articles 151, 158, and 159. In essence, under this arrangement, workers who commit sexual harassment can be dismissed, or in other words, face Termination of Employment.

Apart from that, the settlement procedure can also go through the court in accordance with the provisions of the Criminal Law. The Penal Code does not specify penalties for perpetrators of sexual harassment, but it prohibits any inappropriate and violent acts or threats to engage in sexual relations. This rule serves as the basis for curbing sexual harassment crimes in the

workplace. Forms of sexual harassment that lead to complaints, as regulated in the Criminal Law, include:

1. Violence with force to have sexual intercourse (Article 285)
2. Unpleasant acts that violate the norms of decency, such as sexual immorality, kissing, touching the genitals or chest.

The Criminal Code provides for a sentence of up to two years and eight months in prison, as well as a fine, for this act. In the case of violence resulting in sexual relations, the penalty increases to 12 years in prison. Furthermore, it is also regulated in Article 289, which states that "Anyone who, with violence or the threat of violence, commits or allows an obscene act to be committed on another person, resulting in an act that damages decency, shall be punished by imprisonment for a maximum of nine years." Acts of sexual immorality, such as kissing or touching the genitals or chest, are included. Therefore, the legal protection for workers provided by the Employment Law will be applied more to cases of harassment that are difficult to prove using the Criminal Law. Meanwhile, cases involving physical violence that leaves scars can be addressed through criminal law as regulated in the Criminal Code.

## CONCLUSION

Based on the research and discussion above, it can be concluded that legal protection for workers from acts of sexual harassment is regulated in various existing laws. The number of sexual violence cases continues to increase, particularly in the work environment. This research demonstrates that workers, especially female workers, are often in a weaker position than their employers or superiors. This is because, from a gender perspective, women are still considered to be weaker than men. These factors leave female workers vulnerable to sexual violence threats, placing them in increasingly difficult situations. Therefore, it is necessary to provide protection for female workers through criminal law policies as outlined in statutory regulations. Regarding the protection of sexual violence victims, labor authorities should implement appropriate and proportionate protective measures to address the victim's suffering. These measures may include compensation, support, assistance, counselling to enhance their resilience, specialized care for victims, and conducting thorough investigations to ensure the proper implementation of established regulations and ensure safety.

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