

# Human Rights in Indonesia's Constitution: Human Rights Violations in Sexual Violence

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## Abstract

Human Rights (HAM) are basic rights that are owned by every human being which is natural because it is a gift from God and is inherent in every human being that must be guarded, protected and respected. Indonesia as a constitutional state of law should place human rights in the applicable constitution. In Indonesia, sexual violence is still an important issue because the rate of cases is still high every year. Sexual violence is a form of violation of human rights. The purpose of this study is to analyze sexual violence which is considered a violation of human rights. The type of research in this writing is normative or library research, namely researching by examining various library sources related to the topic of discussion. The results of this study are that acts of violence against women are considered a violation of human rights and have been agreed at the world conference on human rights in Vienna in 1993. In the constitution in Indonesia, it has been regulated in Chapter XA article 28, some of which are related to the right to be free from treatment and get protection from discrimination. For a child, the right to survive, grow and develop, and receive protection from violence and discrimination is also regulated. Sexual violence must be seen from the elements of crimes against human rights because it is related to human dignity.

**Keywords:** *Human Rights, Constitution, Sexual Violence*

## Introduction

Human rights are a set of rights inherent in the nature and existence of every human being as a creature of God Almighty and are

His gift that must be respected and upheld, and protected by the state, law, government,



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and everyone for the sake of honor and protection of human dignity.<sup>1</sup>

Human Rights (HAM) are basic rights that are owned by every human being. As a constitutional state that upholds the constitution, human rights should also be part of the constitution. The international basis for the protection of human rights itself is contained in the Universal Declaration of Human Rights (UDHR) which has been ratified since December 10<sup>th</sup>, 1948. Indonesia itself has also ratified several covenants on human rights such as social and economic rights, political rights, and others. Therefore, as a multicultural country, it is appropriate for Indonesia to also uphold the existence of these human rights and place them in its constitution.

According to Sri Soemantri, in general, the material for the constitution or the basic law includes three fundamental things: 1) The existence of guarantees for human rights and citizens; 2) The establishment of a fundamental constitutional structure of a country; 3) The division and limitation of constitutional tasks which are also fundamental.<sup>2</sup> As a constitutional state that upholds the constitution, this should be an important part of the constitution that will be enacted.

In the Constitution of Indonesia, the 1945 Constitution in Chapter X Article 28, it has been regulated related to the right to be protected from violence and discrimination. Included in this is sexual violence whose victims are often women and girls. Data recorded in the Komnas Perempuan Annual Records (CATAHU) in 2020 illustrates that in the 12 years from 2008 to 2019 violence against women increased by 792% (almost 800%) meaning that violence against women in Indonesia for 12 years increased by almost 8 times. This phenomenon is still said to be like an iceberg, which can be interpreted that in actual situations, women are far from experiencing a confident life.<sup>3</sup> Many things become self-involved by women which in the end makes women not open up to the violence they have experienced. This is also inseparable from the stigma by the community and the lack of partiality towards victims of violence.

Women and men as human beings both have biological needs, in this case, the need for sex. The problem today is if these actions related to sexual needs are met in a way that is not supposed to or not voluntarily (there are elements of coercion and violence) this will have an impact on public unrest, especially for victims. The impact on one victim to another is very diverse. They usually lose their

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<sup>1</sup> Yeni Handayani, "Human Right management in Indonesian constitution and American constitution", October 2014, 1

<sup>2</sup> C. Anwar, *Theory and Law of Constitution*, (Malang: In-Trans Publishing, 2011), 61.

<sup>3</sup> Year Note (CATAHU) National Woman commission in 2020

confidence, feel guilty and disgusted with themselves, feel unworthy to live, and so on. Of course, this has an impact on his right to live safely, and quietly without discrimination from anyone.

Research related to sexual violence with human rights is certainly not the first research, but there are previous studies that have examined it but of course, there are differences with this research:

*First, research by Livia Ramayanti and Suryaningsi entitled "Analysis of Child Victims of Sexual Harassment and Violence in the Perspective of Law and Human Rights".*<sup>4</sup> This study uses a normative legal research method through a law and case approach. The results of this study are that parental caution is very important in fulfilling children's human rights and allowing violence to occur in children is a form of human rights violation.

*Second, research by Desi Sommaliagustina and Dian Cita Sari entitled "Sexual Violence in Children in the Perspective of Human Rights".*<sup>5</sup> This study uses a normative legal research method with a law and case approach. This study aims to draw legal principles that can be applied to positive law.

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<sup>4</sup> Livia Ramayanti and Suryaningsi, "The Analyze the children's victim of sexual violence Analisis Anak Korban Pelecehan dan Kekerasan Seksual dalam Perspektif Hukum dan HAM", *Jurnal Penelitian Ilmu Hukum*, Vol.1, No.7, (Juli 2021)

<sup>5</sup> Desi Sommaliagustina and Dian Cita Sari, "Sexual violence for child in Human rights

*Third, research by Dini Amalia Anggraini entitled "Increasing the Value of Human Rights to Combat Harassment, Violence and Addressing Legal Injustice Against Women".*<sup>6</sup> This research is legal science research with a normative method. The result of this study is that the law in Indonesia for cases of sexual violence is still not handled properly even far from justice.

Based on the three previous studies above, the research object has similarities with the research object that the researcher will choose, namely sexual violence and human rights. In addition, the methods used are also normative or bibliographic. Even so, Dini Amalia's research is legal research, then Livia Ramayanti and Suryaningsi's research, and Desi Sommaliagustina and Dian Cita Sari's, they use a law and cases approach. Meanwhile, this time the researcher will focus more on sexual violence and the constitution of human rights itself. So later it can be explained that sexual violence is included in human rights violations. Thus, of course, the results of this study will be different from the previous three studies.

This study aims to analyze sexual violence which is considered a violation of

Perspective". *Journal of Psychology*, Vol. 1, No.2, (February 2018)

<sup>6</sup> Dini Amalia Anggraini, "The Increasing oh Human Right Value to prevent a violence and hardness, and solving injustice law for Woman", *Pancasila Education research Jurnal*, Vol. 1, No. 11, (November 2021)

human rights that has actually been regulated by our constitution in Indonesia.

## **Method**

The type of research in this writing is normative or library research. The library method is one type of qualitative research method carried out in the library,<sup>7</sup> where the researcher will answer the problems asked by various of kinds of literature.<sup>8</sup>

Researchers will examine various literature sources related to the problems or topics to be written, namely about Human Rights (HAM) in the Constitution and also sexual violence.

## **Discussion**

### **Human Rights in Indonesia Constitution**

Theoretically, human rights are rights inherent in human beings that are natural and fundamental as a gift from God that must be respected, guarded, and protected. The essence of human rights itself is an effort to maintain the safety of human existence as a whole through a balance between individual interests and public interests. Likewise, efforts to respect, protect and uphold human rights are shared obligations and responsibilities between individual, government (government apparatus, both civilian and military) and the state.<sup>9</sup>

In essence, according to the author, human rights are rights that have been attached to a person since he was born. So that as long as he lives these rights will continue to exist in humans. This right will also give rise to an obligation, in this case, the obligation to respect and uphold the rights of others. So that when we expect that our rights can be respected by others, then that is where we are also obliged to respect the rights of others as well. Because the fulfillment of human rights is very important as it is related to human dignity, the constitution in this case in Indonesia is the applicable law that also provides the basis for the importance of upholding human rights.

The results of the amendments to the 1945 Constitution provide a bright spot that Indonesia is increasingly paying attention to and upholding human rights values which have received little attention from the government. The second amendment to the 1945 Constitution has given rise to a special chapter on Human Rights, namely Chapter XA. The reference behind the formulation of CHAPTER XA on Human Rights in the 1945 Constitution is MPR Decree Number XVII/MPR/1998. The MPR decree then gave

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<sup>7</sup> Andi Prastowo, *Qualitative Research Method in Research Planning* (Yogyakarta: Ar-Ruzz Media, 2012), 120

<sup>8</sup> Ida Bagoes Mantra, *Research Philosophy and Social Research Methods*, (Yogyakarta: Pustakasiswa, 2007), 40

<sup>9</sup> A. Bazar Harapan, Nawangsih Sutardi, *Human Rights and Law*, (Jakarta, CV. Yani's, 2006), 33

birth to Law Number 39 of 1999 concerning Human Rights.<sup>10</sup>

In addition to ratifying Decree No. XVII/MPR/1998 regarding Human Rights and Law No. 39/1999 on Human Rights in order to promote and protect human rights in Indonesia, a Human Rights Court was also established with the issuance of Law No. 26 of 2000 concerning the Human Rights Court.

Human rights, according to MPR Decree No. XVII/MPR/1998 includes:

1. Right to life.
2. The right to have a family and continue the lineage,
3. The right to self-development.
4. Right to justice,
5. The right to independence.
6. The right to freedom of information.
7. Security rights.
8. Welfare rights.
9. Right of protection and promotion.

Because the substance of this MPR decision has been followed up with the issuance of Law no. 39 of 1999 on Human Rights, and the 1945 Constitution has also been amended by adding Chapter X A on Human Rights, then the existence of MPR Decree No, XVII/MPR/1998 is considered no longer valid, so it has been revoked and

declared no longer valid based on article 1 number 8 MPR Decree No. I/MPR/2003.<sup>11</sup>

So in its session on August 18, 2000, the MPR added a special chapter on human rights as stated in Chapter X A Article 28 A-J. In principle, the Human Rights contained in the chapter are as follows:

1. The right to live and defend life and life.
2. The right to form a family and continue the lineage through a legal marriage.
3. The right of children to survive, grow and develop, and receive protection from violence and discrimination.
4. The right to self-development, education, benefit from science and technology, arts and culture in order to improve the quality of life and welfare of the community.
5. The right to advance oneself in fighting for their rights collectively.
6. The right to recognition, guarantee, protection, and legal certainty as well as equal treatment before the law.
7. The right to work and receive fair and proper remuneration and treatment in an employment relationship.
8. The right to equal opportunities in government.
9. The right to citizenship status.
10. The right to freely embrace religion and worship according to their religion, choose education and teaching, choose a job,

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<sup>10</sup> Ida Bagus Subrahmaniam Saitya, "Regulation of Human Rights in Indonesia", *Sintesa Journal*, Vol 8, No 2, September 2017, 80

<sup>11</sup> Masribut Sardol, "Regulation of Human Rights in Law in Indonesia", *Rechtsedee Journal*, Vol 1, No 1, 2014, 6

- choose a nationality, and choose a place to live.
11. The right to communicate and obtain information, seek, store, process, and convey information using all available channels.
  12. The right to personal protection, family, honor, dignity, and property as well as a sense of security and protection from fear.
  13. The right to be free from torture and degrading treatment and the right to obtain political asylum from other countries.
  14. The right to live in physical and spiritual prosperity and to have a good and healthy living environment and to obtain health services.
  15. The right to obtain facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice.
  16. The right to social security allows full self-development.
  17. The right to have private property rights and such property rights may not be taken arbitrarily from anyone.
  18. The right to life, not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, to be recognized as a person, and not to be prosecuted on the basis of retroactive law.
  19. The right to be free from treatment and to get protection from discriminatory acts.
  20. The cultural identity and rights of traditional communities are respected in line with the times and civilizations.
  21. The protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the State, especially the government.
  22. To uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations.
  23. Everyone is obliged to respect the human rights of others in the orderly life of society, nation, and state.
  24. In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, values religion, will and public order in a democratic society.

That is how solid and complete human rights are regulated and guaranteed constitutionally in the 1945 Constitution. To oversee the implementation of human rights, a commission was previously established, namely Komnas HAM based on Presidential Decree No. 50/1993. 39 of 1999.<sup>12</sup>

The protection and enforcement of human rights is the responsibility of the state, especially the government. Even though there is a law that regulates human rights, namely

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<sup>12</sup> Masribut Sardol, 8

Law Number 39 of 1999 concerning Human Rights, in terms of its enforcement, it must still be voiced. Human rights monitoring and struggle continue to be voiced by human rights observer institutions and also the Legal Aid Institute (LBH) in the community. The existence of these institutions must continue to exist as a form of supervision of the role of the state as the body responsible for the fulfillment of the human rights of every citizen. In addition, it is also a center for civil society assistance that needs assistance to fight for their rights that have been injured by the state and fellow citizens.

The inclusion of human rights in the constitution in Indonesia is certainly not without reason, so it is hoped that it will further strengthen the commitment in protecting and upholding human rights because then human rights are constitutionally protected. However, we also must not be careless to continue to monitor, protect, uphold and assist anyone whose human rights have been injured, both women and men.

### **Sexual Violence**

Violence is a term consisting of two words, namely "vis" which means (power, and strength) and "latus" which means (to bring), which is then translated as bringing strength.

The Big Indonesian Dictionary provides an understanding of violence in a narrow sense, which only includes physical violence. According to KBBI, violence is an act that can cause injury or death to another person or cause physical damage to other people's property.<sup>13</sup>

Sexual violence itself is a physical or non-physical sexual act by someone who has power over the victim with the aim of fulfilling the sexual desires of the perpetrator that the victim does not want. According to the National Commission on Violence Against Women (Komnas Perempuan), there is a concept of morality related to women that develop in society. Women are considered a symbol of chastity and honor. This concept makes women often seen as a disgrace when experiencing acts of sexual violence. Not only that, women are often blamed for these actions. This is also the reason why many women in Indonesia who experience sexual violence choose to remain silent.<sup>14</sup>

The definition of sexual violence in the Draft Law on the Elimination of Sexual Violence (RUU PKS) is any act of degrading, insulting, attacking, and/or other actions against a person's body, sexual desire, and/or reproductive function, by force, against the

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<sup>13</sup> Maulida H. Syaiful Tency and Ibnu Elmi, *Sexual Violence and Divorce*, (Malang: Intimedia, 2009), 17

<sup>14</sup> Hadibah Zachra Wadjo and Judy Marria Saimima, "Legal Protection for Victims of Sexual

Violence in the Context of Realizing Restorative Justice", *Belo Journal*, Vol. 6, No. 1, (January 2021), 9

will of a person who is unable to do so. give consent in a state of freedom due to unequal power relations and/or gender relations which result in physical, psychological, sexual suffering or misery, economic, social, cultural and/or political loss.<sup>15</sup> The forms of sexual violence in the PKS Bill itself include:

1. Sexual harassment
2. Sexual exploitation
3. Forced contraception
4. Forced abortion
5. Rape
6. Forced marriage
7. Forced prostitution
8. Sexual slavery and
9. Sexual torture

Victims usually experience physical Human Rights Violations in Sexual Violence including acts of violence against women, which need to be sued because it is a manifestation of injustice in relation to gender roles and differences. Sexual violence is one of the various forms of violence against women which is not solely an individual matter but is a state (public) affair. This is because sexual violence is a crime rooted in social, cultural, economic, and political values in that society. Sexual violence includes acts of violence that can hinder progress and prevent a person from getting his human rights and freedoms

which can also hinder gender equality between men and women.

Violence against women is considered a violation of human rights and was agreed at the 1993 world conference on human rights in Vienna. However, not many people know that acts of violence, including sexual violence, are violations of human rights as well.

The Vienna Declaration and Program of Action (VDPA) is a human rights declaration adopted by consensus at the world conference on human rights on June 25, 1993, in Vienna, Austria. The VDPA draws attention to the importance of women's rights and the rights of girls, Section 1 paragraph 18 which states: the human rights of women and girls are an inalienable, integral and inseparable part of universal human rights Full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the elimination of all forms of discrimination on the basis of sex is a priority goal of the international community. The VDPA also explicitly recognizes gender-based violence, sexual harassment and exploitation, with Section 1, paragraph 18 further stating: “gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trade, are incompatible with the

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<sup>15</sup> Draft Law on the Elimination of Sexual Violence (RUU PKS)



dignity and value of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in areas such as economic and social development, education, safe delivery, and supportive health and social care.

The VDPA concludes by declaring women's rights and gender-based exploitation as legitimate issues for the international community. Section 1, paragraph 19 concludes that: "women's human rights should be an integral part of the human rights activities of the United Nations, including the promotion of all human rights instruments relating to women. The world conference on human rights urges governments, institutions, and intergovernmental organizations to intensify their efforts for the protection and promotion of the human rights of women and girls. The VDPA, in part II, paragraph 38 also asks the General Assembly to adopt a draft Declaration on the Elimination of Violence Against Women and urges States to combat violence against women in accordance with its provisions and that "violations of the human rights of women in situations of armed conflict are violations of to the basic principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic

rape, sexual slavery, and forced pregnancy, require certain effective responses.

In the constitution of Indonesia itself, of course, it has been regulated in Chapter XA article 28, some of which are related to the right to be free from treatment and get protection from discriminatory acts. In addition, for a child, the right to survive, grow and develop, and receive protection from violence and discrimination is also regulated. Violations of these human rights can affect other human rights. For victims of sexual violence who will usually experience trauma, it will have an impact on their next life, even the effects will be felt for life. Physical wounds may return to the way they were before, but the mental wounds received will remain for the rest of their life, like a knife cut, even though they have healed, the scars will remain. For a child who is a victim of sexual violence, he will also be prevented from getting his rights to feel good growth and development, a good education, and a safe life. Children who are a victim of sexual violence do not understand what is happening to their bodies, or what is happening to their life, usually, they will realize this when they are adults. And this will greatly affect their mental and psychological health.

Because the problem is that sexual violence has already occurred and has various forms and has a negative impact on the child's

personal self, both physically and psychologically. Sexual harassment has a major impact on the psychology of children because it causes unstable emotions. Therefore, child victims of sexual abuse must be protected and not returned to a situation and place where the sexual abuse occurred and the perpetrator of the abuse is kept away from the child victim of abuse. This is to provide protection for child victims of sexual abuse. Children who are victims of sexual abuse will experience a number of problems, such as losing the will to live, hating the opposite sex, and seeking revenge, if their psychological condition is not taken seriously. Therefore, the state should continue to guarantee the protection of the rights of children victims of sexual violence, including the right to be able to live, grow, develop, and participate properly in accordance with human dignity and protection from violence and discrimination. Obtaining health services and social security as well as obtaining education and teaching so that children return to their ideal conditions as usual.<sup>16</sup>

Children's rights are part of the human rights contained in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child.<sup>17</sup>

The purpose of the protection of human rights is to maintain the human dignity of everyone, including the human dignity of women as well. Unfortunately, cases of sexual violence are still attached to morality, not seen from the elements of crimes against human rights violations, because actually, this is related to human dignity. What needs to be remembered is that in sexual violence the victim is not only harmed psychologically and physically but also his human dignity is harmed as well.

Based on this study, it can be seen that acts of sexual violence are a form of harm to human rights. Sexual violence is also a state (public) affair. In the sense that the state has a big responsibility to solve this problem, including protecting the victims. This is because it turns out that all citizens are protected by their rights in the state constitution.

Awareness of sexual violence is a form of violation of human rights needs to continue to be narrated from now onwards. Not a few consider that sexual violence is a personal matter for the people involved so that people are reluctant to interfere, let alone to protect the victim. From the perspective of sexual violence as a violation of human rights, it is

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<sup>16</sup> Sibarani cockfighting, "Sexual Harassment in the Viewpoint of Law Number 39 of 1999 concerning Human Rights", *Legal Research Journal*, Vol 1, No 1, (April 2019), 160

<sup>17</sup> Desi Sommaliagustina and Dian Cita Sari, "Sexual Violence in Children in the Perspective of Human Rights", *Journal of Psychology*, Vol. 1, No.2, (February 2018), 80

hoped that later people will be more careful in their actions.

## Conclusion

Violence against women is considered a violation of human rights and was agreed upon at the world conference on human rights in Vienna in 1993. In the constitution of Indonesia, it has been regulated in Chapter XA article 28, some of which are related to the right to be free from treatment and get protection from discrimination. In addition, for a child, the right to survive, grow and develop, and receive protection from violence and discrimination is also regulated. Sexual violence must be seen from the element of crimes against human rights because it is actually related to human dignity.

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