

Criminal Law and Gender Inequality

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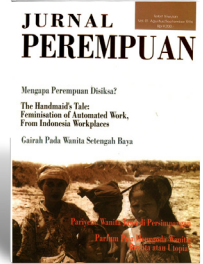
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Criminal Law and Gender Inequality

The 1998 reformation is often seen as a momentum for the improvement of the systems of life and nationhood. This becomes evident in the reform agenda, which was voiced at the time. We certainly remember that the reformation of the law was one of the points in the reform agenda. Now, 20 years later, we see that the efforts of the women's movement to integrate the rights of women victims of gender-based violence in a variety of regulations have manifested in a number of laws, such as the Human Rights Act, the Law on the Elimination of Domestic Violence, the Law on the Protection of Witnesses and Victims and the Law on the Elimination of Trafficking People. In early 2018, the Draft Law on Penal Code (RUU KUHP) has reached the final stage of discussions since the idea of revision was first initiated in 1963 and its formulation happened during the 1980s. The re-formulation of the Criminal Code, which is the basis of and framework for enforcing criminal law system in Indonesia, is expected to create justice for all citizens.

But several representatives of civil society have criticized the Criminal Code Bill, which is being discussed by the government and the House of Representatives, and even proceeded to reject it. The criticism and rejection, for one, focus on a rule that has the potential to criminalize every citizen, particularly women, children, indigenous people and marginalized groups. The criticism and refusal by civil society shows that there is something wrong with the revision process of the Criminal Code Bill. If the law is intended as a tool to regulate the citizens' behavior and create justice, then it should depart from the experience of all citizens. It shouldn't only represent the interests of half the people or a certain group of citizens.

Meanwhile, the criminal law draft under discussion just ignores the interests of women and marginalized groups. This is most evident in chapters governing morality, such as articles on adultery, rape, lewd acts, trafficking of women and children, access to contraceptive information and services, and abortion. The articles are essentially related to the body's authority and female sexuality, so that the voice and experience of women should be considered. The placement of articles on sexual violence such as rape, sexual abuse and trafficking of women and children in the moral chapter will obscure the nature of the offense and reduce it to a matter of violation of morality and public decency—while we actually look at a form of attack on the body and crimes against human dignity. In addition, the regulation of the sexual behavior of citizens with gender, class, ethnic and faith-based moral standards potentially criminalizes vulnerable

groups. On the other hand, the existence of a pro-women law does not guarantee the revision of the Criminal Code to result in gender equality.

Indeed, feminist lawyers have voiced criticism of the law since several decades ago. They criticize the neutrality of the law that is deemed incapable of recognizing women's experiences as protecting the interests of women. The ideology of legal neutrality is insensitive to the fact that differences exist in society. The principle of equality and legal protection that is said to be neutral is actually based on the standard of male values. This is because the law was originally created to govern the affairs of the public sphere, and in history, men dominated the public domain. Thus the law only recognizes the experience in the public domain, meaning the experience of men. With regard to criminal law, feminist jurists expose discrimination in criminal law against women who become defendants. They also highlight the inability of criminal law to provide protection for victims of sexual violence. Furthermore, they find that even criminal law rules that are not directly related to gender distinctions are also based on assumptions about gender. As a result, while appearing gender-neutral, the formulation and application of criminal law in fact discriminates against women or reinforces stereotypes about the behavior of women and men.

In the context of the revision of the Criminal Code, which allegedly ignores the voices, experiences as well as the interests of women and marginalized groups, it is important to conduct a study of criminal law and gender inequality. The studies and research published in this edition of JP show some important issues in the current Criminal Code practice, where the Criminal Code fails to protect women against the threat of gender-based violence, and instead becomes the means of controlling women's freedom and reproduces gender inequality. Women victims and women who face obstacles to access legal identities are potentially criminalized. In addition, the research on the application of the article of fornication indicates that the article is not able to provide justice and fulfill the rights of women victims. Meanwhile, the draft law on criminal law has not been fully oriented towards the interests of the victims. To that end, as a process of reflection over the 20 years of the journey of the ideals of legal reform and in response to the current deliberation process of the KHUP Bill, JP97 Vol. 23 No. 2 on Criminal Law and Gender Inequality is expected to open the perspective of policymakers and be considered in the revision of the Criminal Code. **(Anita Dhewy)**

Sri Wiyanti Eddyono (Faculty of Law Universitas Gadjah Mada, Yogyakarta 55281, Indonesia)

Criminal Code Draft and Protection for Victims of Gender-Based Violence

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 55-65, 2 table, 14 ref.

This paper analyzes whether the Criminal Code Draft is oriented towards the interests and protection of the rights of victims, especially women victims of gender-based violence. This paper uses juridical or normative research methods, through analysis on the articles in the Criminal Code Draft. The analytical framework used in this study is feminist legal theory that puts law as a political product and often neglects the interests of women victims of different forms of violence. This paper finds that the main orientation of the Criminal Code Draft is towards the interests of the perpetrator and the community, but not explicitly towards the victim's interests. It is assumed that with reference to public interest, it has been victim-oriented. The victim is still seen as the party that helps to reveal the case, not as the party that has suffered and that needs protection and reparation. The responsibility of the perpetrator also tends to meet the interests of sense of community justice, not the victim. In addition, some of the regulatory articles on criminal offenses still contain problems because the Criminal Code Bill prefers to compile several laws outside the Criminal Code but does not revise articles based on the experiences of the victims that are difficult to implement, such as dealing with PKDRT (domestic violence). Furthermore, there are still articles that victimize victims by criminalizing those who are actually victims of gender-based violence.

Keywords: Criminal Code Draft, gender-based violence, victims rights, criminal law system

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Formulation of Article 488 of the Indonesian Criminal Code Draft: A Portrait of Failure in Construing the Problem of Women's Access to Legal Identity

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 67-74, 13 ref.

The Draft of the Indonesian Criminal Code has provoked a debate, especially with regard to the articles under the scope of morality. The formulation of Article 488 has the potential to create new problems for women, especially women who have obstacles in accessing legal identity. This Article 488 is a reflection of the failure of jurists to formulate laws, in understanding women's experience in relation to their access to the right to obtain legal identity, especially in the context of their relationships. The criminal law is not the answer to all problems. This paper is compiled using data obtained from field study related to the handling of cases of violence against women under customary law, carried out by the authors and the team from Legal and Community Studies Fields in 2015, 2016 and 2017 in Eastern Indonesia; as well as data on legal and non-legal text analysis. The overall method and analysis of research findings uses feminist legal studies and feminist legal theories.

Keywords: legal identity, legal analysis of feminist perspective, women's experience

Laili Nur Anisah (Jejer Wadon, Banyudono, Boyolali, Jawa Tengah, 57373, Indonesia)

Fornication as a Criminal Conduct in the Criminal Code Draft: Legal Protection Versus Criminalization Against Women

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 75-82, 22 ref.

On 14 February 2018 the Draft of the Criminal Code (RUU KUHP) was adjourned for an undetermined time as several articles were deemed to be problematic. One of them is the criminal act of adultery. A new article states that a man, who has intercourse with a woman by promising a marriage but later denies it can be convicted, is also included in the criminal act of adultery. The article is formulated to protect the interests of women; on the other hand the article can also be a criminogenic factor that can make women victims turn into perpetrators of criminal acts. This paper examines the position of women among the protection articles and articles that threaten the criminalization of women. This paper is a normative juridical study by using literature reviews to find the problem and solving it. As a result, protection articles for women can be a factor that criminalizes women victims, and therefore they need to be carefully formulated so that the goals do not shift.

Keywords: Criminal Code Draft, fornication, courtship violence, criminogenic, victimogenic, enforcement

Ajeng Kamaratih-Desjardins (Metro TV, Jakarta 11520, Indonesia)

'Measuring' Adultery in Article 284 of the Criminal Code

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 83-91, 23 ref.

After the resolution about the petition of extending the meaning of adultery was rampantly discussed within the community, Article 284 KUHP is still an interesting article to be reviewed. The diverse Indonesian community demands that a number of applied regulations have to be as fair as possible and become legal protection for all layers of society, including the regulations on crimes of morality. There is a different understanding about violating decency and morality within various community groups, which causes the article in the Crime on Morality section, especially in adultery cases, to marginalize some groups of the community. There are indeed some groups that might potentially become victims of adultery cases if the meaning of adultery is to be broadened. Furthermore, in its application, Article 284 of the Criminal Code makes the line between morality and crime very thin. This research was conducted by using the approach of feminist legal theory, by reviewing legal texts to gain an understanding on how sexuality and imagination about the woman victim is projected by law.

Keywords: law, human rights, criminalization, victim, criminal code

Mariana Amiruddin (National Committee Against Violence Against Women, Jakarta 10310, Indonesia)

Fornication as Criminal Act, Women's Vulnerability and the Stigma Against Women's Movement

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 93-100, 8 image, 7 ref.

This paper explains how criminal code of zina (adultery/ fornication) criminalizes women victims of sexual violence. The data of Komnas Perempuan's annual records and direct complaints from the victims illustrate that women's personal relationships are particularly vulnerable to violence. The theories of feminism are used as an analytical tool of women's lives and their problems in the private sphere, including in terms of sexual relationships and love, whether married or not. This paper concludes with the challenge of the stigma of the feminist movement, which is considered to be opposed to morality and religion – and this is not happening in Indonesia only.

Keywords: fornication, Criminal Code Draft, feminism, personal relations, sexual relations, sexual violence

Bella Sandiata (Jurnal Perempuan, Jakarta 12540, Indonesia)

Women Facing Legal Cases: Reflection on the Use of Articles 284 and 285 of the Indonesian Criminal Code from the Experiences of their Legal Counselor

DDC: 305

Jurnal Perempuan, Vol. 23 No. 2, May 2018, pp. 101-110, 11 ref.

This paper raises the narrative of the experience from legal counselors who have accompanied women victim in cases related to article 284 of the Criminal Code on adultery and article 285 of the Criminal Code on rape. In an interview with the author, four female public lawyers share their experiences including challenges and obstacles they encountered while advocating cases of adultery and rape. Reports that weren't accepted, a slow-running legal process or even a halt in the middle of the process, and facing the attitude of sexism towards victims and public lawyers are some of the obstacles and challenges experienced by the legal counselors of women victims. The interviewees could clearly see that the criminal law is still not on the side of women and has not provided justice for women. They directly saw and experienced the difficulty of the legal process regarding the article of adultery and rape. Using feminist legal theory, this paper finds that laws that do not yet have a gender perspective or side with women are major obstacles to the fulfillment of women victims rights.

Keywords: criminal law, legal counselor, women victim, experience, adultery, rape

Women Facing Legal Cases: Reflection on the Use of Articles 284 and 285 of the Indonesian Criminal Code from the Experiences of their Legal Counselor

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Abstract

This paper raises the narrative of the experience from legal counselors who have accompanied women victim in cases related to article 284 of the Criminal Code on adultery and article 285 of the Criminal Code on rape. In an interview with the author, four female public lawyers share their experiences including challenges and obstacles they encountered while advocating cases of adultery and rape. Reports that weren't accepted, a slow-running legal process or even a halt in the middle of the process, and facing the attitude of sexism towards victims and public lawyers are some of the obstacles and challenges experienced by the legal counselors of women victims. The interviewees could clearly see that the criminal law is still not on the side of women and has not provided justice for women. They directly saw and experienced the difficulty of the legal process regarding the article of adultery and rape. Using feminist legal theory, this paper finds that laws that do not yet have a gender perspective or side with women are major obstacles to the fulfillment of women victims rights.

Keywords: criminal law, legal counselor, women victim, experience, adultery, rape

Introduction

In 2017, the Chief Justice of the Supreme Court ratified the Supreme Court Regulation (Perma) Number 3 Year 2017 on Guiding Court on Women Cases Against the Law. This regulation is one of the outcomes of policy advocacy conducted by civil society, including: the Women and Children Working Group in collaboration with the Indonesian Judicial Monitoring Society Faculty of the Law Department of the University of Indonesia (MaPPI FHUI) and the Australia-Indonesia Partnership for Justice 2 (AIPJ 2). The Guidance Book for the Court on How to Handle Women Against the Law, directed at judges and potential judges in Indonesia, accompanied the ratification of the regulation.

The emergence of the aforementioned regulation shows that to date, the law in Indonesia to date still has many problems that are particularly faced by women who have run-ins with the law. Article 1 paragraph (1) of Perma No. 3 Year 2017 explains that women facing the law are women in conflict with law, women as victims, women as witnesses or women as an affected party. In this paper, the so-called women facing the law can be regarded as women victims. The various problems faced by women facing the law as written in the Manual of Trial Against Women Against the Law, are among others, (1)

Law Enforcement Officials (APH) don't have a gender perspective yet. (2) Women who become victims often experience revictimization. (3) Criminal Procedure Norms are still oriented towards the rights of suspects and defendants. (4) The identity of women victims is often still published through mass media coverage. (5) Women victims are examined simultaneously with the defendant. (6) Often, PBH are not accompanied by a companion and/or legal counsel. (7) Practice of corruption and evidence engineering in the law enforcement process (Kelompok Kerja Perempuan dan Anak Mahkamah Agung Republik Indonesia dan Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia 2018, pp. 32-35).

In addition, the Annual Report of the Jakarta Legal Aid Foundation 2017 mentions that out of seven complaints of women protection cases received by LBH Jakarta, only two cases were taken to the path of litigation, and both cases are running very slowly. The most common reason for this is the lack of evidence as sufficient proof of and the unknown whereabouts of the perpetrators. In addition, at the reporting stage, victims are often blamed and reports are almost denied by the police (LBH Jakarta 2017, p. 111). The inadequacy of legal instruments in seeking justice and protection for women victims of violence is a challenge that should be answered by legislators and the government.

Not a few of the cases concerning women facing the law are cases of violence against women, which put women in the position of victims. The 2017 Women Violence Record issued by the National Commission on Violence Against Women (Komnas Perempuan) recorded violence against women in the personal domain of 71% or 9,609 cases, most of which were cases of sexual violence (Komnas Perempuan 2018, p. 1). Komnas Perempuan states that throughout 2017, sexual violence continued and threatened women of various age ranges (Komnas Perempuan 2018). However, the resolution of cases of violence against women in Indonesia is still not in favor of the victims. Based on the case data of the Legal Aid Institute (LBH Apik), in 2017 there were 308 cases of domestic violence (KDRT) but only 17 cases were completed through legal means (Astuti 2018).

The condition described above is a real picture of the legal condition in Indonesia that is still not siding with women. This kind of condition is criticized through the emergence of Feminist Legal Theory. The feminist legal theory, which was developed in feminist jurisprudence studies, says that the law implies a number of limitations or attachments to the reality of social values. The limitations are: first, in reality, the legal formulation is phallocentric (male domination), so the issues or cases that reach the court experience obstacles and do not resonate. Second, the limitations associated with work processes within the legal structure become a problem for women. Third, limitations related to judicial limits focus on the rational and logical only (Widanti 2005, pp. 27-28). These three obstacles become a barrier for women when facing the law.

Obstacles for women in law affirm that the existing law is still not on the side of women victims. Based on the understanding of feminist legal theory, the author traces and elevates the experience of women in law. This paper attempts to capture the barriers and obstacles faced by women through experiences captured by legal counselors. The experience of legal advocates focuses on their experience in dealing with women facing legal cases related to articles in the Criminal Code relating to violence against women. In the Criminal Code there are articles that allow women victims of violence (including sexual violence) to complain to the police. The articles that can be used as a basis for complaining cases experienced by women victims of violence include (Irianto 2011, p. 45):

- Article 281-297 Chapter XIV of the Criminal Code on "Crime Against Morality",
- Article 532-535 Chapter VI Book III on "Violation of Decency",

- Article 351-356 CHAPTER XX of the Criminal Code on "Persecution",
- Article 338-340 CHAPTER XIX of the Criminal Code on "Crimes Against Life"
- Articles 328, 330, and 332 Chapter XVIII of the Criminal Code on "Crimes Against People's Freedom", and
- Article 368 CHAPTER XXIII on "Extortion and Atrocities".

From the sections of the Criminal Code, which allow victims of violence to complain of the above case, articles 284 and 285 of the Criminal Code are part of the articles set forth in Chapter XIV on "Crime against Morality", commonly used to regulate the criminal act of adultery and rape. This paper will focus on the application of both articles towards women facing the law. The focus of the article that chooses these two chapters departs from the rise of persecution cases due to adultery and rape that have recently become more prevalent in society. In cases of adultery and rape, women are in a weak position legally, and it is difficult to obtain justice because of the patriarchal culture and social construction that thrives in society.

This research uses a qualitative approach, and the data was collected by through in-depth interview techniques. Meanwhile, the research subject consisting of four legal assistants who have experience in assisting women victims in cases related to articles 284 and 285 of the Criminal Code were selected by using the snowball sampling technique. The analysis of the research findings was conducted by using feminist legal theory. Through notes and the analysis of the experience of legal counselors, this paper seeks to show the field conditions of articles 284 and 285 of the Criminal Code so far and that legal procedures have neither partiality nor marginalized women in conflict with the law.

Narrative of Experiences of Legal Counsels in Assisting Cases on Article 284 and 285 of the Criminal Code on Female Victims

Nur Setia Alam, Maria Lince, Kartika Nurmala, and Linda Teresia (2018, interviewed 28 March) from the Indonesian Feminist Lawyers Club (IFLC) shared their stories about the rape case they accompanied until reaching the final decision at the Tangerang District Court. Since its inception in 2016, on the initiative of an active advocate trainee organized by Komnas Perempuan, IFLC focuses on assisting women victims and girls. One case related to article 285 handled by IFLC was a case

of rape that occurred in Tangerang at the end of 2017. IFLC itself handled the case after a referral from Komnas Perempuan, so IFLC did not accompany the victim from when she first reported the incident. The chronology of the case itself begins with victim X, who at the time of the incident was returning from her job and was then called by the caught perpetrator, S, and then invited to an empty house where two other colleagues of S, T and U, were waiting. Both of S's colleagues committed the rape, while S himself failed to rape X because people in the surroundings became of the rape at the scene. S was captured by the villagers but his colleagues T and U managed to escape and are still on the People Search List (DPO). The incident was immediately reported to the police and the victim was asked to conduct a forensic medical examination. The victim's parents reported the case to Komnas Perempuan because the victim needed legal and psychological assistance. Komnas Perempuan also referred the case to IFLC for assistance.

During the process of providing counsel to the rape case, the IFLC advocacy team faced many obstacles, including the trauma of victim that made her reluctant to attend the trial. IFLC itself assessed that the Prosecutor did not function properly in accordance with the rules of the Criminal Procedure Code (KUHAP), which means seeking victims to bring them to trial. Under the conditions of a trial that has been held several times but without presence of the victim, the prosecutor said that the case should not be tried if the victim is not willing to attend. According to the IFLC, it is not necessary for this delivery by the prosecutor, because after all, the event did occur, and the legal process should continue in accordance with the rules. IFLC at that time approached the prosecutor and the judge to convey the condition of the victim, who was traumatized, as reason for the victim's absence during the trial. The prosecutor and judge at that time received an explanation from IFLC and asked IFLC to present the victim in court to be a witness. The challenge for IFLC at the time was to try to bring the victim to trial while the victim herself was reluctant to attend because of the trauma, and she moved from one place to another because she did not want to be found to be brought to trial. The closed court process took place in the absence of the victim, who was represented by her legal counsel, namely the IFLC. The judge sentenced the captured offender S to three-and-a-half-years, which was lighter than the prosecutor's demand of five years. The closed trial process, which was not attended by the victim, included a reading of the victim's case report (BAP), the forensic medical examination proof, as well as the witnesses, namely the victim's parents, the perpetrator,

and the aunt of the victim. IFLC considered the verdict necessary in this case because the offender could argue for his actions, let alone the desire of one of the perpetrators to marry the victim. The wish was alleged by the IFLC as an attempt to eliminate the criminal verdict.

Arinta Dea Dini Singgi (2018, interviewed 30 March), a public lawyer from LBH Masyarakat shared her experience of handling the case of a rape victim. Arinta accompanied the victim with the article 286 of the Criminal Code; the rape was committed when the victim was helpless. Arinta recounts the chronology of the case she handled in 2016. The victim was alone in a bar, when the perpetrator approached her and asked the victim to have a drink together. The victim approved and ended in a state of unconsciousness; she could not recall the events that occurred after accepting the invitation of the offender to drink together. The victim woke up with a bruised eye at the house of a friend. The victim asked her friend how she could reach her friend's house; her friend said that the victim called, crying, and asked to be picked up at a hotel. When the victim's friend asked about the victim's location, the victim could not answer because she was so confused. The victim's friend asked the victim to look for something that could identify her location. When picked up by her friend, the victim was in tears and did not wear any clothes, just a blanket to cover her body. The victim simply cannot remember the incident that happened just after accepting the invitation to drink with the perpetrator. The victim reported her case two weeks after the incident at the instigation of her office friends.

Arinta was trusted to handle the case after one of the victim's friends asked her to report her case to LBH Masyarakat. Arinta said that there was an unfortunate incident when she wanted to report the case to the Central Jakarta Police Station along with the victim, LBH Masyarakat volunteers, and the victim's friend. When reporting to the Central Jakarta Police, the victim who couldn't remember any incident that night had to face the police who kept saying, "Miss, do not say that you do not remember. Miss, just be honest with us." According to the police, people, even when they are drunk, can still remember something. The victim replied with a trembling and almost crying voice, "Sir, why would I say I forgot? Because that would complicate the investigation, right? I will not lie." The report of the victim was processed and continued into the investigation phase. The police together with Arinta, the victim and her friend saw the hotel's CCTV at the time of the incident; from there, it could be seen that the victim was being escorted by the security guard and the perpetrator whom the

victim met at the bar. This reinforces the testimony of the victim stating that the perpetrator took the victim away in a state of unconsciousness. At the time, the CCTV footage couldn't be requested because the hotel does not allow the provision of the CCTV recordings. The forensic medical examination process was conducted because the police suggested it, and the victim did a forensic medical examination two weeks after the incident at Cipto Mangunkusumo Hospital (RSCM) at her own expense. Arinta regretted this because the police did not provide information that the cost of the forensic medical examination at RSCM had to be borne by the victim, while the forensic medical examination itself was quite expensive, and the victim had to pay a fee of approximately Rp 900.000,00. During the investigation process in the Women and Children Service Unit (UPPA), there were police officers that often commented when the victim was questioned, comments like "how can you forget?" When going to the hotel with police for investigation, the passing police questioned the victim, so the victim had to explain repeatedly to every policeman who asked. Not long after the report and the investigation process (seeing the location of the incident and the CCTV footage), the case just stopped. The victim and her legal counsel have tried to contact the police who received the victim's report at the beginning but there was no meaningful response from the police. The lack of seriousness from the police led the victim to finally giving up to process the case.

Siti Zuma (2018, interviewed 3 April) from the Jakarta Legal Aid Institute shared her experience in dealing with a case of adultery and rape. In 2015, Zuma handled a case of adultery, which was reported by the abuser's wife. Based on the testimony of the victim, the perpetrator, who is her husband, has often had affairs during their 18 years under the same roof. In 2015, the victim felt that she was no longer able to face the continuing adultery of her husband, and she finally had strong evidence to report the affair of her husband that year. The victim's child found a memory card containing videos and indecent photographs of the perpetrator and his affair. The victim brought the evidence and reported the perpetrator's act of infidelity to LBH Apik, before the victim learned that her husband had committed an affair repeatedly in the form of transferring the proof to the perpetrator's mistress. Accompanied by LBH Apik, the victim reported the affair to Polda Metro Jaya under the article of adultery and psychological violence in the field of Domestic Violence. However, the report of the perpetrators' infidelity was deemed not to meet the element of adultery so that it was inserted into the article

of attempted adultery. Until now, the case is still in the process of law; the report that continues to be developed by the police is psychological violence in the household experienced by the victim. Finally, because the criminal process took so long, the victim preferred the divorce path, because the requirement in the article of adultery says that after three months of reporting adultery, the case should be accompanied by a divorce lawsuit. During the legal process, the victim was pressured by the perpetrator's (husband) family; they cornered the victim and did not blame the perpetrator. After a divorce with the perpetrator, the victim continued to stay under one roof with the perpetrator because the perpetrator feels that he owns the house, and there has been no lawsuit about the property right. Until now, the criminal case for psychological violence by the perpetrator is still in the prosecutor's office and has not reached the stage of the trial. The adultery trial doesn't continue due to the difficulty of proof, and the police judged that the elements are not enough to process the report. Zuma argues that the threat of a nine-month penalty with such a difficult situation when it comes to providing proof is often so troublesome that women victims rather choose the path of divorce. Zuma said there was no significant obstacle when reporting the case to the police, which is probably due to the fact that the police already know the name LBH Apik.

Zuma also spoke about handling the cases of two rape victims. In the first case, the rape occurred in an *angkot* (minibus) when the victim returned from work. The victim, who was sitting in the front seat, wanted to get off because the *angkot* did not take the usual route. However, the perpetrator—the driver of the *angkot*—said that the victim would be escorted to her home. The rape took place on one of the flyovers in the South Jakarta area, where the victim was threatened with a sharp object, which could not be seen clearly by the victim due to the darkness outside. The victim tried to scream for help and opened the side door but the effort was in vain because of the quiet surroundings, and considering that it was the first day of fasting. Facing severe threat, the victim, who is the mother of two young children, eventually resigned and succumbed, believing that she could bring the perpetrator into a judicial process. After the rape, the victim was dropped off at the side of the road where she asked for help from a taxi driver who was passing by. The victim told the taxi driver what had happened to her, and the taxi driver encouraged her to report the case to the police. She reported the incident to the South Jakarta Police, and after receiving the victim's report, the police managed to capture the perpetrator who had fled. The

victim, accompanied by her husband, went to LBH Apik to ask for legal assistance, where the victim's husband cried and blamed himself for the incident that happened to his wife. The legal process of the case succeeded until the judiciary, when during the trial the perpetrator stated that the incident was consensual because the victim had invited the perpetrator to chat with her on the way. The victim succeeded to break the perpetrator's argument because the so-called chat was simply ordinary smalltalk. Arguments of consent were not proven at all because during the intercourse, the victim was under threat. The judge issued an eight-year sentence for the perpetrator. Although the case has been completed and the perpetrator has been punished, the conditions in the victim's home has since been tinged by quarrels due to the stigma that a woman who has been raped is no longer holy, even though she is married and has a husband. Zuma explained that in the aftermath of the rape, the household struggled to get back to harmony, because both the victim and her husband blamed themselves for the incident. However, they managed to overcome their struggles and until now the condition of the victim's household has returned to harmony.

The other rape case handled by Zuma occurred when the victim was pregnant and raped by her own neighbor. The rape occurred repeatedly but there was no penetration because the perpetrator used his hand while raping the victim. Initially the victim's report was not received at Cakung Police Sector, afterwards the victim and her husband reported the incident to LBH Apik. Together with LBH Apik, the victim made a report at East Jakarta Police Station where it was finally received. However, when the report was received, the victim and her husband decided not to continue the report on the grounds that they wanted to continue living in peace. The victim and her husband made this decision together because both felt the case was disturbing their domestic life. The victim's husband had the feeling that his wife who was a victim of rape had feelings for her rapist. The victim and her husband were advised to undergo a recovery at the Pulih Foundation and they decided to revoke their report due to domestic problems and chose to start a new life. Zuma saw from the two cases of rape she handled, that the stigma against female rape victims couldn't be separated from female victims. When an unmarried woman is raped, she will be considered not a virgin anymore, and it is difficult for her to get a husband. Married women who become victims of rape also experience it. When married women experience rape, there will be a disturbance in the victim's household,

because the victim is considered to be unholy and as a betrayer the household.

Sri Nurherwati (2018, interviewed 5 April), a commissioner of Komnas Perempuan who is also a public lawyer, recounted several cases she worked on in relation to article 284 on adultery. The public lawyer commonly referred to as Nurher said that there is still a lot of discrimination by police handling reports of adultery. Nurher said that police tends to process cases reported by husbands for adultery committed by their wives, because they always get caught in the act. Meanwhile, the police often reject reports by wives on their husbands committing adultery. Based on the experience of facilitating adultery cases, Nurher saw that the husbands reported by their wives because of adultery usually receive impunity and thus are not punished at all. Nurher recounts one of the cases of adultery she handled, where the perpetrator was a criminal investigator who was caught red-handed by his wife having an affair with another woman. When the wife of the perpetrator came to the house where the husband was with his affair was even asked to leave by the head of the local community because she was considered to cause too much commotion. Not long after the incident, the wife met a male friend whom she had not seen for a long time. The man then listened to the wife's story, and from then on, they often met to discuss the wife's situation. One time, when they met at a hotel, her husband entered and arrested his wife and male friend, although nothing had happened between the both of them. The wife was in the bathroom while her male friend was in the room, both of them still fully dressed. The husband reported his wife on the charge of adultery, while the wife reported her husband for the psychological abuse she had suffered for years. After going through the process of mediating, they finally revoked their respective reports. In the end, the case stalled in the middle of the process, and the cheating committed by the perpetrator was not further processed because of a mutual agreement.

Another adultery case handled by Nurher saw a wife reporting her husband because of adultery, and the police then requested proof of adultery. She brought evidence from the hospital, proving that the extramarital affair of her husband had resulted in the birth of another child. However, the evidence brought by the complainant was disputed by the police by saying, "But you actually did not see if there was any intercourse or not," while in fact the complainant had already explained that her husband was living in a house with another woman. Police were also reluctant to process the report from the

complainant because they considered it a private matter, and the complainant was seen as a source of commotion. Nurher also talked about another case related to adultery she worked on; this time it was the case of adultery committed by a husband who always used physical violence on his wife when she refused to have sex with him. This husband was often unfaithful because he had a high sexual desire, until finally he married an herbalist in an unregistered marriages. His wife reported the case to the police but was rejected on the grounds that "Well, it is what is it, how come you report your husband for being with another woman, just leave it alone, the most important thing is that he's still coming home." The marriage eventually ended in divorce, but the adultery case against the husband was never officially accepted and processed by the police.

A Critical Reflection on Articles 284 and 285 of the Indonesian Criminal Code from the Viewpoint of the Attorneys Handling the Cases of the Women Victims

The above stories of the female victim's lawyers provide an overview of the cases relating to articles 284 and 285 of the Criminal Code, which position women as victims. Based on the experience of the four speakers, there is a common thread among their stories, namely the lack of legal alignments in women. The women who get trapped in the articles 284 and 285 of the Criminal Code are in a difficult position in terms of proof of the case they face. It is not easy for women victims to prove the rape and/or adultery. Not a few cases related to rape and adultery were terminated in the middle, some couldn't even process their reports because it was too difficult to provide proof. Proof seems to be an essential requirement that must be provided in every case in articles 284 and 285.

Reflection on Article 284 of the Criminal Code

Article 284 of the Criminal Code regulating adultery is an article with a complaint offense, which is very difficult to prove. The experience of our sources shows that cases of adultery they handled tend not to get a settlement due to the unfulfilled provision of article 284. The proof required in article 284 is someone who directly witnessed the actions listed in article 284. This is something that is difficult to prove because adultery is done secretly, so that the proof of sexual activity (that the penis actually entered the vagina) is certainly very difficult to produce a direct eyewitness. So far, persecution was never accompanied by clear evidence i.e. a witness to the sexual intercourse that took place at the time of the persecution, while

article 284 requires someone who witnessed the sexual intercourse. This is in line with the following statement by Zuma, public lawyer of LBH Apik.

Yes, there has to be evidence that the penis entered the vagina. And we sometimes feel pity as well when we handle cases like this. Persecution doesn't necessarily mean that there is a witness to the adultery at the moment when the penetration happened; but then the moral sanctions in society are so heavy for the women who are prosecuted, for example this couple that has a sexual relationship and is then prosecuted for alleged adultery, it's definitely the woman who is cornered. (Zuma 2018, interviewed 3 March)

Of the adultery cases handled by Zuma (LBH Apik) and Sri Nurherwati, almost all did not proceed to trial with various reasons, ranging from lack of proof to invitations to reconcile from the party reported. The threat of a nine-month punishment with difficult evidentiary substance is the reason for the female victim whose partner committed adultery to prefer a divorce. In the case of adultery cases, it is not uncommon to come upon discrimination, as shared by Nurherwati based on the cases she handled. When the husband reported the adultery committed by his wife, almost all of them were caught red-handed, so that the police accepted his report. Meanwhile, when a wife reported adultery committed by her husband, even if she has brought evidence of a child resulting from the infidelity committed by her husband, the police did not accept the report. In some cases of adultery reported by the wife, it was not uncommon that the police annulled the report on the grounds that it is not unusual for a man to have an affair.

This view is evident from the perspective of law enforcement officers in Indonesia who are still gender-biased when handling adultery cases. Article 284 of the Indonesian Criminal Code can be regarded as the article allowing the state to interfere in the private sphere of the individual community. The question that needs to be reflected on together is how prepared is the state taking part in taking care of the private domain of its citizens? How effective has article 284 of the Criminal Code been so far? Judging from the experience of legal counselors in handling adultery cases, it is necessary to question the effectiveness of article 284, which regulates the crime of adultery. Based on the experience of the law counselors who have shared their stories in the previous section, it can be seen that when it comes to adultery cases, the police did not accept some reports due to lack of proof. The conditions for proving adultery – catching the adulterer red-handed – make it difficult for women victims of adultery to report their case. Often, they also have to face sexism by police officers when

reporting cases of adultery. Sexist behavior and gender bias by law enforcement officers become obstacles for women victims and are a challenge for the Indonesian government and the legal system to create a law that provides justice for women victims.

Reflection on Article 285 of the Criminal Code

Meanwhile, weak points can also be found in the application of article 285 of the Criminal Code, which regulates criminal acts of rape. The article has not been able to impose just punishment compared to the suffering experienced by women victims. Furthermore, article 285 of the Criminal Code also does not provide space and even closes the possibility of criminal penalties against marital rape. Another disadvantage contained in this article is that it implicitly conveys that a wife cannot report her husband in the event of a sexual relationship outside of his wish. This implies that the relationship between husband and wife is a unbalanced power relation (Irianto, 46). In practice, the weaknesses in the application of article 285 of the Criminal Code are also reinforced by the lack of perspective and knowledge of gender from law enforcement officers (APH). Often, in cases of rape, the victim is blamed for what has happened. Sometimes, we hear the pretext of “mutual consent” by the perpetrator.

In the rape case handled by Zuma (LBH Apik), when the trial took place, the perpetrators of rape stated that the incident occurred based on “mutual consent” because the victim at that time invited the offender to have smalltalk during the ride. The victim successfully denied the “mutual consent” excuse because she was threatened with a sharp object by the perpetrator. In terms of evidence in the case of rape, the sources stated that the evidence of the forensic medical examination, the testimony of the victim and the other party are still necessary evidentiary elements to prove the rape case. However, the fact that law enforcement officers often do not side with women victims is certainly a barrier that is still often encountered. The lack of perspective and knowledge of gender and gender-based violence often leads to law enforcement officers such as police, prosecutors and judges not understanding the condition of women victims of rape that were traumatized by what they experienced. This can be seen from the experience of IFLC when handling cases of rape in the judiciary without the presence of victim due to the trauma she endured that made her refuse to attend the trial. The absence of the victim during several trials has caused the prosecution to state that if the victim is not present

(absent) in the hearing, then the case should not be tried. IFLC as the legal counsel acknowledged to be astonished upon hearing the prosecutor’s statement and tried to defend the victim by explaining that the victim cannot attend because of the trauma she experienced.

Feminist Legal Theory: Giving a Voice to the Experience of Women in Law

From the exposure of women victims in cases related to articles 284 and 285 of the Criminal Code, it can be illustrated that there is a red thread tying them together: criminal law in Indonesia still does not show partiality towards women or gender bias. A sensitive legal protection of victims and women victims is needed to provide justice, certainty and legal protection for women victims. Gender bias in existing legislation can be overcome by the involvement of the feminist movement in law through feminist legal theory in order to achieve a gender justice law.

Feminist jurisprudence or feminist movements first appeared in the late 1980s. The problem that led to the emergence of this movement—also known as the feminist legal theory—was due to women being excluded in all domains (Scales 2006, p. 84). The emergence of feminist legal theory coincided with the influx of the second wave of feminism in law schools in the mid-1980s. The writers of the feminist movement at the time questioned why the law failed to provide equality. By 1990, feminist legal theories grew despite differences of view that existed between radical feminists and liberal feminists who often debated the feminist-related assumptions in law. The most important assumption at the time was about the realm of law that belonged entirely to men. So the question that emerged from feminist thinkers at the time was whether men’s law was able to accommodate women’s needs? (Richardson & Sandland 2000, p. 1).

Feminist jurisprudence or feminist legal theory tries to fundamentally challenge some important assumptions in conventional legal theory as well as some conventional wisdom in critical legal research. Feminist law theorists are deeply influenced by feminist thought in philosophy, psychoanalysis, semiotics, history, anthropology, postmodernism, literary criticism, and political theory. However, further and more fundamental movements of feminist legal theory are more seen and extracted from women’s experiences (Salman & Susanto 2005, p. 131). At the beginning of its emergence, the feminist legal theory movement has a very close relationship with the Critical Legal Studies movement that gained influence from

Marxism and also poststructuralism as well as criticism of racism and queer theory, succeeding in seeing the law at that time not only based on context but also as being able to analyze further the social context of the law itself (Richardson & Sandland 2000, p. 4). In the annual meeting of the Critical Legal Studies movement in 1985, the theme raised was feminism and law. Continuing in 1987, the theme adopted was racism and law, whereas at the annual conference in 1992, the CLS membership was composed of several sponsors (another sponsor of theorists on race and feminism) (Salman & Susanto 2005, p. 131).

The basic assumption of feminist legal theory begins with Brenda Cossman. It is said that the law is informed by men and aims to strengthen patriarchal social relations (norms, experience, male power). They are ignorant of the experience of women (as well as the poor, the marginalized, and other minorities), who are invisible. It is not surprising that the law produced is a biased law and its impact contributes to the injustice of women. Finally, by demonstrating the non-neutral features of law and how the law is operated, suggestions for improvement can be found (Irianto & Shidarta 2011, p. 254). The aim of the jurists of feminist theories is, first, to develop specific legal arguments into challenges for discriminatory and unjust laws. Second, pay attention to the handling of cases in court. Third, focusing on the formulation of proposals for legal reform, either revocation of legislation and policies analyzed to the detriment of women, as well as the enactment of new laws. Thus the theory of feminist law exists on two levels, namely the theoretical level of exploitation and criticism of the interaction between law and gender. The second is on the practical level, observing legal practice, in the sense of how legislation is applied in women's legal cases. Furthermore, it is expected that the results of the analysis can generate recommendations aimed at legal reform (Irianto & Shidarta, p. 255).

Judging from the theory of feminist law, the law that has been in effect in Indonesia still does not accommodate women's experiences – both laws governing relationships between people with one another (private law/civil law) as well as laws governing individual relationships with the state (public law/criminal law). If we look more closely at how feminist legal theory examines the law in Indonesia through legal system theory according to Lawrence M. Friedman (2005, p. 12), it can be said that the legal system consisting of legal substance, legal structure and legal culture in Indonesia does not fully side with women and doesn't have a gender perspective. The substance of the law is an actual rule consisting of legal

products such as laws and law books, norms prevailing in society or living law, and human behavior in society. In the context of legal substance in Indonesia, it can be seen that there are still many regulations that are made without involving women's experiences so that existing regulations often discriminate against women. The legal structure is the legal framework in charge of keeping the legal process running to stay within the limits of existing regulations. The legal structure according to Law Number 8 Year 1981 on Criminal Procedure Law includes the police, prosecutors, courts, and the Criminal Executing Agency (Correctional Institution). The performance of the legal structure in Indonesia in the face of cases that make women victims are still gender biased and ignorant of the experiences of women victims. In further examination, the substance and legal structure in Indonesia that are gender-biased and non-aligned with women are in fact inseparable from the still-strong patriarchal culture embedded in Indonesia. This patriarchal culture indirectly influences the growing legal culture in Indonesia. The legal culture is the attitude and the value of society related to the legal system. The legal culture determines how the legal system can be applied in existing cultures among communities. It is therefore not surprising that the substance and structure of law in Indonesia is still gender biased, due to the patriarchal culture, which has a strong influence on legal culture and all elements in the substance and structure of law in Indonesia.

A legal world filled with male domination leaves women marginalized and makes it difficult to get justice. The sources in this paper who were assistants of the law and accompanied women victims also believe that the law in Indonesia in particular the criminal law is not siding with women. The position of women when faced with criminal cases seems weak and responsible for the actions that women victims do not want. The application of legal procedures that make it difficult for women victims prove that there is a disregard for women victims in the cases they face. The experience presented by the speakers indicates that criminal law in Indonesia has not yet provided a safe and comfortable space for women victims to report and process the criminal lawsuits they face. Law enforcers who commit discriminatory acts and sexism become one of the problems encountered in the field. Questions and statements that cornered women victims actually hampered the legal process. The existence of the Women and Children Service Unit (UPPA) in the police does not guarantee access to services to women victims and has therefore not provided a sense of security and comfort for women victims to report their cases. The forensic medical examination process

for women victims who experience sexual violence is often considered not significant because it is done well after the incident happens. The slow process of receiving reports in the police, according to the sources, is often the cause.

The way women victims fight for their rights in the realm of criminal law in Indonesia is still very difficult because the laws in Indonesia both structurally, substantially, and culturally do not want to hear the experiences of women victims. This is similar to what the feminist legal theory claims, namely that the neglect of women's experience results in the impartiality of the law towards women. Thus it is not surprising that women are marginalized from the law and further away from justice because of the legal substance, legal structure, and legal culture that does not accommodate women's experience. All elements of the substance, structure, and culture of law in Indonesia that cannot be separated from the construction of patriarchal values in society create a gender biased legal situation. The implementation of articles 284 and 285 of the Indonesian Criminal Code, which cannot provide justice for women victims, is the result of gender-biased legal products. This gender biased legal products have an impact on how the law treats women victims. Women victims, as can be seen from the stories of experiences conveyed by the sources, find themselves in a position to be discredited in seeking justice for their case. They sometimes have to go through repeated traumas because of the people around them, who do not believe what they experienced, and the attitudes or treatment of law enforcement that discriminates against them. Not a few of the female victims felt unable to fight for not being able to withstand the moral burden or trauma they experienced, whereas the legal process was not entirely clear to provide justice for them.

Rigid chapters in the irreversible positive law do not seem to be able to provide justice for women victims. It can in fact be broken through the arguments of feminist legal theory that is actually trying to articulate women's experience in law. The principle of equality in law that is gender biased precisely complicates the position of women in law. Therefore the argument of feminist legal theory that prioritizes the importance of voicing women's experience in law should be practiced in legal practice. Law enforcement officials are able to practice the arguments of feminist legal theory by listening to the voices of women victims in the legal proceedings they have to go through. Justice can only be obtained for women victims who find themselves in criminal cases, in

particular cases included in articles 284 and 285 of the Criminal Code, if all elements of law enforcement want to hear and understand the position of women victims. This is certainly difficult to do given the inherent patriarchal culture, which may have become synonymous with the values held firmly by law enforcement in Indonesia. However, it does not mean that what has been voiced by feminist legal leaders cannot be tried and practiced by law enforcement in Indonesia. Law enforcement officials within the legal structure should be able and willing to develop legal arguments from the beginning of the legal process to the judicial process to halt discrimination against women in the legal domain and to slowly change gender biased laws. Legal reforms that seek to accommodate women's experience are also needed to halt gender biased legal practice in Indonesia.

Conclusion

The experience of female victim lawyers in the case of articles 284 and 285 of the Indonesian Criminal Code shows that Indonesian law still does not favor women victims. Justice for women victims is still far from the fire because of the position of women victims who are still often attenuated by (law enforcement) law. A reform of the legal system in writing and procedural law is necessary to accommodate the experiences of women victims. Such systems and products should be able to ensure legislation, including criminal law, with a gender perspective and siding with the women victims. The principles in feminist legal theory are a solution to halt the practice of gender-biased law, one of which is by attempting to hear the experiences of women victims. Furthermore, a change of perspective due to a patriarchal culture that subordinates women needs to take place in three elements of the legal system as a whole, namely the legal structure, legal substance, and legal culture. Legal reform in the future also needs to see and engage women so that justice for women victims who are faced with lawsuits is not a utopia and can really provide answers to the search for justice by women victims who were brave enough to report all the injustices they experienced.

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Jurnal Perempuan (JP) is a quarterly interdisciplinary publication in the English language that aims to circulate **original ideas in gender studies**. JP invites critical reflection on the theory and practice of feminism in the social, political, and economic context of Indonesian society. We are committed to exploring gender in its multiple forms and interrelationships.

The journal encourages practical, theoretically sound, and (when relevant) empirically rigorous manuscripts that address real-world implications of the gender gap in Indonesian contexts. Topics related to feminism can include (but are not limited to): sexuality, queer, trafficking, ecology, public policy, sustainability and environment, human and labor rights/ issues, governance, accountability and transparency, globalization, as well as ethics, and specific issues related to gender study, such as diversity, poverty, and education.

JP welcomes contributions from researchers, academia, activists, and practitioners involved in gender advocacy in any of the areas mentioned above. Manuscripts should be written so that they are comprehensible to an intelligent reader, avoiding jargon, formulas and extensive methodological treatises wherever possible. They should use examples and illustrations to highlight the ideas, concepts and practical implications of the ideas being presented. Feminist theory is important and necessary; but theory — with the empirical research and conceptual work that supports theory — needs to be balanced by integration into practices to stand the tests of time and usefulness. We want the journal to be read as much by stakeholders as by academics seeking sound research and scholarship in women's study.

JP appears annually and the contents of each issue include: editorials, peer-reviewed papers by leading writers; reviews, short stories, and poetry. A key feature of the journal is appreciation of the value of literature, fiction, and the visual narrative (works of art, such as paintings and drawings) in the study of women's issues

Submissions

To discuss ideas for contributions, please contact the Chief Editor: Anita Dhewy via anitadhewy@jurnalperempuan.com. Research papers should be between 5000-10000 words. Please make sure to include in your submission pack an **abstract outlining the title, purpose, methodology and main findings**. It is worth considering that, as your paper will be located and read online, the quality of your abstract will determine whether readers go on to access your full paper. We recommend you place particular focus on the impact of your research on further research, practice or society. What does your paper contribute? In addition, please provide up to **six descriptive keywords**.

Formatting your paper

Headings should be short and in bold text, with a clear and consistent hierarchy. Please identify **Notes or Endnotes** with consecutive numbers, enclosed in square brackets and listed at the end of the article. **Figures** and other images should be submitted as .jpeg (.jpg) or .tif files of a high quality. Please number them consecutively with Arabic numerals and mark their intended location within the body of the text clearly. If images are not the original work of the author, it is the author's responsibility to obtain written consent from the copyright holder before using them. Authors will be asked to confirm the status of images, tables and figures in the journal submission pack. Images which are neither the authors' own work, nor are accompanied by the necessary permission, will not be published.

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