

LEGAL POLICY ON SEXUAL HARASSMENT (CATCALLING) FROM THE PERSPECTIVE OF CRIMINAL LAW

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Abstract

This article aims to understand and analyze the regulation of catcalling from a criminal law perspective as well as analyzing the regulation of verbal sexual harassment according to criminal law reform. This research is normative legal research. The results of this research are that the act (catcalling) has the potential to be a criminal act that meets the elements of a criminal act, this act is categorized as an act of verbal sexual harassment and can be studied from several articles in the Criminal Code, the Law on pornography and the need for a legal policy. related to special rules for the act of catcalling to achieve legal certainty and also the fulfillment of criminalization conditions so that the act of catcalling can be specifically regulated. The conclusion is that the act of catcalling has the potential to be a criminal act that occurs in the public sphere through the elements of a criminal act, the impact of this act of catcalling results in mental and psychological disorders, up to the psychological level and to determine a policy it is necessary to pay attention to the morals, values and principles contained in it. in society and pay attention to the conditions of criminalization. To achieve legal certainty, there is a need for legal policies regarding regulations specifically related to catcalling as well as social sanctions for catcalling perpetrators

Keywords: Catcalling, Criminal Law Policy, Verbal Sexual Harassment

INTRODUCTION

This article discusses social problems that are considered normal among society, but have negative impacts on the groups who are the objects of these actions. This act has the potential to constitute a criminal act, but there is no legal certainty even though this act is a category of crime that violates moral norms and includes verbal sexual harassment. verbal, or physical where the incident can be in a public space. Acts in verbal and physical form now often occur in society, especially for women. This makes women not feel safe, peaceful and serene. Moreover, acts of sexual harassment carried out in public spaces will make the victim feel unsafe and comfortable when outside the home. Even though everyone has the right to a sense of security and peace as well as protection against threats of fear, this is regulated in Article 30 of Law Number 39 of 1999 concerning Human Rights. Sexual harassment has a very wide scope, various forms, from verbal or written, physical and non-physical, starting from verbal expressions (indecent comments, sexual jokes and so on) in physical form (poking, touching, caressing, hugging and so on), showing pornographic/dirty images, indecent attacks and coercion such as, forcing to kiss or hug, threatening to make things difficult for the woman, or refusing to provide sexual services, even rape. This often happens and there is even a graphic increase in sexual harassment. One of them is in Indonesia, which is an emergency country due to sexual



harassment which threatens society. This has become a global problem for society, especially for women. This harassment often occurs to women with verbal and non-verbal harassment. Various forms of harassment, verbal and physical inappropriate treatment are a problem that interferes with human rights. In fact, this often happens in public, on the streets, malls, public transportation, markets and even in the community, which includes verbal harassment. This treatment disrupts the victim's comfort and disrupts the victim's human rights. Unclear enforcement of human rights makes it easy for criminal acts to arise. For example, sexual violence in public spaces is difficult to punish, because there are no strict regulations to regulate this matter. One act that often occurs but there is no strict follow-up or rules governing this is catcalling. The term catcalling is used in this article because the term catcalling is used globally in various countries.Catcalling or what can be interpreted as verbal harassment is committing an act such as saying pornographic/sexual words or flirtatious, itchy or coquettish behavior towards another person which causes discomfort and also in the form of whistling, being called "Hey, beautiful, come and sit on my brother's lap.", "girls, let's play, how many nights do you have, don't be shy", "where are you going, bro, tease us, come here, bro, take you there", made by a stranger, unwanted comments, such as "so beautiful, bro, her body is so beautiful", "don't be too aggressive or you'll be kissed!", strangers observe their bodies until they come to an action that results in a form of unwanted touching that creates feelings of insecurity, which is categorized as street harassment. Light sexual violence in the form of sexual violence verbally such as verbal comments, jokes, pornography, whistling insults, and non-verbally such as facial expressions, body movements or other actions that ask for sexual attention that the victim doesn't want is harassing and/or insulting to the victim. 3. This act of catcalling is not It's only limited to calling, whistling, but there are limits to catcalling which really has the potential to be a criminal act and requires special regulations such as sexual comments, commenting on body shape, trying to tempt women with sweet words to the point of being sexual and showing their vital organs on an ongoing basis. . This is an act that disturbs a person's human rights, which is a crime of decency that is always considered normal in society. In fact, the act of catcalling makes a person feel afraid to leave the house, does not feel safe or comfortable, the consequences of this act have a huge impact on a person in terms of psychological, mental, and fulfillment of human rights and social realization, so there is a need for follow-up with special regulations. However, in reality, when this happened, only a few responded and law enforcers did not even respond when it was reported that it was clear that it was a crime of morality. The fact is that those who are victims of verbal harassment (catcalling) are afraid to report it because there is a lack of response from the public and even law enforcement and there is no legal certainty. Usually the victims of catcalling are women, but it can also be men, as well as gays who are the objects of catcalling themselves. And the people who are most often the victims of catcalling are women."Where are you going, Miss, tease us, come here, Brother, take me", made by a stranger, unwanted comments, such as "Very beautiful, Miss, her body is really nice", "Don't be too aggressive, you'll kiss me!", Observe her body by strangers to the point that actions that result in a form of unwanted touching that give rise to feelings of



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Actions that are classified as violent behavior towards women are sexual street harassment which has become a social problem, according to research conducted by Hollaback.org, 71% of women in the world have experienced street harassment from puberty (11-17 years) to until adulthood, and more than 50% of them include physical abuse and the rest are verbal and visual abuse. According to a survey conducted by CCN Indonesia (2016) of 25,213 respondents from both cities and districts, 58% had experienced verbal harassment. Harassment that occurs in public spaces is usually

catcalling to get more attention from the woman and hope that she will respond. Even though it will cause discomfort for women and cause excessive fear.

Verbal sexual harassment does not only occur in Indonesia but in other countries. Verbal sexual harassment by several countries, such as France, Argentina, Portugal, Belgium and Peru has been taken seriously because it has a major impact on the social and psychological lives of victims. This country applies not only criminal sanctions but also fines to perpetrators who carry out catcalling or verbal sexual harassment. Verbal sexual harassment is increasing among women and tends to be tolerated and there is no legal certainty for victims. Catcalling and street harassment itself is a phenomenon that is rarely researched, because this is considered a normal act in society, even though if it is studied further, many victims feel discomfort and even the impact it causes has an impact on the victim. Therefore, this issue is often considered trivial, considered something that is culturally acceptable and even normalized. This is not normal for the object of catcalling, so this is a criminal act and must be held accountable. The impact of catcalling triggers psychological disturbances for women which results in psychological violence. Psychological/emotional violence is an act that causes fear, loss of self-confidence, loss of ability to act, a feeling of helplessness and/or severe psychological suffering in a person. And it also results in trauma for victims affected by catcalling, even this act can continue to occur and receive no response from the public or law enforcement.

Catcalling, which occurs more frequently, will have negative impacts on the victim. However, there are still many victims who do not dare to report it and choose to remain silent. Not many people dare to provide assistance or defense to victims of catcalling because they are afraid it will become a commotion. Along with the progress of the times and the development of information technology, problems related to street harassment, especially catcalling, are becoming increasingly common. Therefore, it is necessary to study how catcalling itself is regulated in the Indonesian legal system and legal policies in reforming the regulation of criminal acts which were initially ordinary acts until they were categorized as criminal acts.

LITERATURE REVIEW

Based on the problems above, a problem formulation can be given, namely:

- 1. How are acts of verbal sexual harassment (catcalling) regulated from a criminal law perspective?
- 2. How are acts of verbal sexual harassment (catcalling) regulated regarding criminal law reform in Indonesia?

METHOD

This article uses a normative juridical method, where this research starts from a legal issue which is carried out to produce new arguments, theories or concepts as prescriptions in dealing with the problems faced and obtained from literature studies, by analyzing a legal problem through statutory regulations, literature. -literature, and other reference materials. Examining the act of catcalling from a criminal law perspective, namely Article

281 Paragraph (2) Article 289, Criminal Code, Article 8, Article 9, Article 34, Article 35 of Law Number 44 of 2008 concerning Pornography. Then, in terms of legal reform, it must be studied in terms of legal policy which takes into account morals, values, principles and conditions of criminalization.

RESULTS AND DISCUSSION

A. Regulation of Verbal Sexual Harassment (Catcalling) from a Criminal Law Perspective

Sexual harassment is a reality that often occurs in society in various forms, including rape. One of them is verbal sexual harassment (catcalling). Starting from small things that are considered normal actions by society, actually have a big impact and become a social problem in society. Catcalling has become a social problem that is considered normal among the public. Usually this catcalling occurs on the streets, markets, public transportation, even in malls. In fact, catcalling has become an act that cannot be considered normal, and has been considered a "ghost" among women. This act of catcalling can lead to rape. Even though the woman who was the victim of catcalling had tried not to respond to the actions of the catcaller. However, in fact, this rejection makes the catcaller feel curious and repeat other types of catcalling, which then makes women feel harassed and feel that their human rights are being violated. The danger of catcalling is more likely to trigger the victim's psychological side and affect the victim's emotions, such as feeling afraid within the victim, more likely to feel uncomfortable, not feeling safe when outside the house, feeling embarrassed as a result of catcalling. Thus, the act of catcalling can become a crime of decency that occurs in public spaces.

If you look at the description of the elements of a criminal act discovered by Simon, there are 5 (five) elements of this act which can be said to be a criminal act. The elements discovered by Simon include: the existence of an act carried out by a human being, the act being punishable by a crime, the nature of the act being against the law, being done wrongly, and being accountable. So based on the explanation of the elements above, the elements of catcalling are as follows:

a. There is an action carried out by humans

The act of catcalling fulfills the elements of human action. This can be seen from the actions carried out by catcallers against their victims. The actions carried out by catcallers are uttering pornographic words/comments or behavior that makes other people who are victims feel uncomfortable. For example, whistling by pursing your lips and blinking your eyes.

b. The action is punishable by criminal law

This act of catalling includes acts of verbal sexual harassment that occur in the public space, which is categorized as a crime of morality because it is an immoral act and contains elements of pornography. So this action is no longer a normal act and then there is no further treatment.

c. This act is against the law

Catcalling can be said to be an unlawful act because it disturbs the comfort and security of other people and disturbs other people's human rights. Where disturbing other people's human rights is an unlawful act.

d. Done with errors

The elements of this error include the capacity of the perpetrator (catcaller) of the crime to be able to take responsibility for the actions he committed. Then there is an inner connection between the perpetrator and the action he commits. In an act there is a form of intentionality and negligence for which there is no reason to erase the error in the form of a justification. So the actions carried out by the perpetrator are a form of intentional action.

e. The perpetrator can be held accountable

A liability from the catcaller is related to the error. Error as an element of criminal liability. People who are able to take responsibility if there is no excuse or justification for the actions they have committed.

B. Regulation of Verbal Sexual Harassment (Catcalling) on Criminal Law Reform in Indonesia

The legal basis for verbal sexual harassment (catcalling) from a criminal law perspective can be seen from several articles relating to verbal sexual harassment. These articles are Article 281 Paragraph (2) of the Criminal Code, Article 8, Article 9, Article 34, Article 35 of the Law on Pornography. There are fundamental reasons why the Pornography Law is used as a legal basis for acts of catcalling, namely looking at the definition of pornography contained in Article 1 Number 1 General Provisions of Law Number 44 of 2008 concerning Pornography. Basically, the application of the articles above is not enough to guarantee legal certainty. There needs to be special rules governing the act of catcalling itself. Apart from that, there is no longer any opinion from the public or the government to continue to normalize this act as a normal act, but rather it is a criminal act that needs further regulation to achieve legal certainty in law enforcement. So that those who are victims of catcalling have the courage to report or reveal the incident they experienced.

One of the reasons why victims choose to remain silent in response to this act of catcalling is because of the lack of response from law enforcement officials and there are no specific regulations regarding the act of catcalling. Therefore, the act of catcalling has become a social phenomenon but none of it can be processed. This is different from other countries which have made catcalling a criminal offense. Special regulations have even been made with prison sentences and fines. Then there are several communities that have been created as anti-catcalling communities, because the government has become sensitive to this act which actually threatens women when they are outside the home.

In Indonesia, catcalling cases are still not taken seriously by the government, so there are no legal regulations governing actions within the scope of verbal sexual harassment. Even though this case has a big impact on those who are victims of catcalling. Catcalling is

an act of verbal sexual harassment which is not yet a heinous act and there are no specific rules governing this act. The Criminal Code only regulates obscene acts which are regulated in Articles 289-296 with the meaning of acts that contain morality, are cruel in lust, and there is also an element of coercion in that article. Then, Article 281 of the Criminal Code also regulates acts that violate morality and politeness, but regarding sexual harassment there are no limits or penalties for this act.

At this time, there is a need for legal policies regarding catcalling specifically in the future to achieve legal certainty in handling these cases. To achieve a criminal law policy, it is necessary to formulate morals, basic values and theories related to criminal law policy. Legal policies carried out must take into account the values contained in society.

Criminal law policy or penal policy is an effort to overcome crime (criminal policy). The penal policy contains the following meanings:

- 1. Penal policy is defined as an effort to overcome a crime using criminal law means.
- 2. Penal policy is viewed from the politics of criminal law as having a goal to be achieved, namely legislation to tackle crime.
- 3. Penal policy creates legislation according to future conditions and future.

There are several basic things that form the basis of criminal law policy in terms of legal politics, namely:

- 1. The foundation is based on ideology, using the values that are the basis of the nation and state.
- 2. The basis of legal politics is normative-based, in this case relating to what should be, assessing an existing reality in order to change it in the right direction as well as the good and bad things.
- 3. The basis of legal politics is constitutionally based, the constitution is the basis for regulating and limiting the power of other parties and at the same time guaranteeing the rights of citizens/people.
- 4. The basis of legal politics is morally based, the need for morals in legal politics to achieve a goal. A policy is born from institutions that have a level of moral awareness to guarantee a quality policy that is oriented and influences the public interest. In legal philosophy, the moral position is the main basis and the highest level.

The process of implementing regulations specifically for catcalling is an effort to provide protection for catcalling victims. Regarding the imposition of sanctions, it must be in accordance with the impact caused and prioritize sanctions in the form of fines. However, if catcalling leads to a fatal act such as rape, a criminal offense will be imposed.

The legal policy regarding the act of catcalling, a form of sexual harassment that occurs in the public sphere, is still being drafted by the government. In the Draft Law on the Criminal Code (RUU KUHP), there is an article that regulates sexual harassment in the public sphere, namely Article 241 Paragraph (1) which states that: "Every person who commits obscene acts against other people who are different "/of the same sex in public

shall be punished with a maximum imprisonment of 1 (one) year and a maximum fine of category III."

CLOSING

Conclusion

Verbal sexual harassment (catcalling) is not a normal thing, but is a global problem that harms other people. The act of catcalling is a criminal act that occurs in public spaces, such as on roads, markets, public transportation, etc. People who have experienced catcalling feel unsafe, peaceful, and at peace when outside the home. The impact of catcalling can cause a person's psychological and mental disorders. According to a criminal law perspective, catcalling is an act of verbal harassment related to criminal acts that violate decency. There are also articles that can be used in handling catcalling cases, namely, Article 281 Paragraph (1) of the Criminal Code, Article 8, Article 9, Article 34, Article 35 of Law Number 44 of 2008 concerning Pornography.

Then, regulating acts of verbal sexual harassment (catcalling) from a criminal law perspective in the future requires a study of morals, values, principles and theories related to criminal law policy. Linked to Article 241 of the Criminal Code Bill, Article 11 and Article 12 of the KPS Bill. These regulations become constituent legal policies for Indonesia. To criminalize an act of catcalling, it is necessary to pay attention to the conditions of criminalization, namely, whether the act is disliked and hated, causing harm to the victim, whether the costs of criminalizing it are commensurate with the results to be achieved, whether it will increase the burden on law enforcement officials, and whether the act hinders the ideals of catcalling. the nation's ideals so that it is dangerous for society.

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