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RESEARCH ARTICLE

REGULATION OF NON-PHYSICAL SEXUAL VIOLENCE IN INDONESIA (ANALYSIS OF LAW NUMBER 12 OF 2022 CONCERNING SEXUAL VIOLENCE)

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Abstract

This study is to examine the Effectiveness of Non-Physical Sexual Violence Regulation in Indonesia to prevent, protect, recover and empower victims and foster public understanding and awareness to eliminate sexual violence, this is because many cases of harassment occur. The problem to be discussed in this study is how effective is the regulation of non-physical sexual violence in Indonesia. The research method used is a normative research method with a statute approach and analyzed using content analysis.

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Introduction:-

This sexual violence has now become a serious and concerning social problem in Indonesia. [1] Sexual violence against children and women includes all acts based on sex differences that result in or are likely to result in physical, psychological and sexual suffering and misery, including threats of certain acts, coercion or arbitrary deprivation of liberty, whether they occur in public or in private life. This is because every citizen has the right to feel safe and free from all forms of violence in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia. [2] Cases of sexual violence in Indonesia have existed for a long time. The types of sexual violence in Indonesia are quite diverse. [3] The National Commission on Violence Against Women reported that cases of sexual violence recorded in service institutions reached 2,363 cases in 2021. The main reason why physical violence is more than non-physical is because of the greater number of complaints. Reporting cases of physical violence is easier to see than non-physical. [4] Evidence of physical abuse can be clearly seen from scars such as bruises, bruises, or sharp object wounds. However, not with non-physical violence. It is possible that the opposite is true. The lack of evidence available to victims of non-physical violence will further discourage victims from coming forward. In fact, there are many non-physical violence that occurs around us such as mental abuse, verbal violence, to economic violence.

For example, being swiped with genitals, touched, touched, followed, aggressively approached, shown genitals, public masturbation, peeping, vulgar gestures, photographed, winking, sexist comments, racist, whistling, comments on the body, sexual comments, horns, and kissing sounds. This is an act of sexual harassment both verbally and non-verbally. The occurrence of sexual violence can be caused because it is possible for the victim to wear clothes that cause increased lust from others. Apart from that, sexual harassment occurs a lot because of the instillation of moral values and one's incomprehension of religion or cannot balance his passions so that sexual harassment occurs. Article 4 of Law Number 12 of 2022 concerning the Criminal Act of Sexual Violence which regulates non-physical

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sexual harassment and Article 5 which explains that everyone who commits nonphysical sexual acts directed against the body, sexual desires, and/or reproductive organs with the intention of degrading the dignity and dignity of a person based on his sexuality and/or decency, shall be convicted of nonphysical sexual harassment, with a maximum imprisonment of 9 (nine) months and/or a maximum fine of Rp10,000,000.00 (ten million rupiah). What is meant by "non-physical sexual acts" is statements, gestures, or activities that are inappropriate and lead to sexuality with degrading or humiliating tquian ha this is explained in the Sexual Violence Crime Law. The Sexual Violence Crime Law is a complete, fair, and formal foundation for victims of sexual violence. In other words, this law is able to provide legal certainty to the community, especially victims of sexual violence.

The lack of evidence possessed by victims of non-physical abuse or violence both verbally, psychologically (emotionally) and economically makes victims discourage reporting. In addition, the psychological dynamics experienced by victims are also the reason why victims of non-physical violence become reluctant to report. The types of behavior that reflect that someone experiences non-physical violence include the dominant behavior of one party that is controlling, degrading, intimidating, insulting and harassing both verbally such as speech and non-verbal such as attitude. Usually, to determine the charges against the perpetrators of crimes requires witness / victim statements or complete evidence. However, in the Sexual Violence Crime Law, one piece of evidence is sufficient to determine an indictment against a person. The valid evidence to prove Sexual Violence Crime, namely. Witness statements, expert statements, letters, instructions, defendants' statements, other evidence such as information and/or electronic documents that have been regulated in laws and regulations. This form of sexual violence is a crime against human dignity and a violation of human rights that must be eradicated, that victims of sexual violence must receive protection from the state to be free from every form of sexual violence. Apart from the legal system of sexual violence, a policy is needed that can prevent, protect, restore and empower victims and foster public understanding and awareness to eliminate sexual violence. Based on the description above, the problem in this study is how effective the regulation of non-physical sexual violence in Indonesia is

Research Methods:-

The research method used is a normative research method,[5] using a statute approach related to the effectiveness of regulating non-physical sexual violence in Indonesia. [6] The statute approach is to examine matters concerning legal principles, legal views and doctrines, and laws and regulations related to the effectiveness of regulating non-physical sexual violence crimes in Indonesia, with accurate and accountable data. [7] In addition, an in-depth examination of the legal facts is also carried out to then seek solutions to the problems that arise in the symptoms concerned. [8]

Discussion:-

A. Shifting Decency Values in Indonesia and Basic Concepts About Non-Physical Sexual Harassment

Norms are a benchmark of all human behavior related to right or wrong, appropriate or not the behavior carried out in interacting in social life. According to C.J.T Kansil, there are four kinds of norms that apply in society. One of these norms is the norms of decency relating to good and bad behavior based on the ability to recognize truth and justice and make a distinction between them. People who violate the norms will be subject to appropriate sanctions. So to avoid all forms of sanctions, we must heed the norms by obeying them and applying them in our daily interactions in order to create peace and peace in interacting in a society. The existence of norms in society forces individuals or groups to act according to social rules that have been formed for a long time. [9]

Norms of decency are social regulations that originate from conscience which produce morals. Norms of decency, a person can distinguish what is considered good and what is considered bad. Violation of decency norms is in the form of physical or routine ostracism sanctions. Norms of decency also give us instructions on how to behave and behave in deciding what to do, avoid and also oppose. The norms of decency are included in the unwritten norms, but are carried out based on conscience. Anyone who violates this norm is considered as a person who is immoral or immoral. Therefore, the norms of decency are also called moral norms because they originate from decency, which is also human morality. [10]

Regarding what is the norm agreement in society, there has been a shift in social norms which from this shift can make society change in terms of daily life. One of the shifts towards the value of decency norms for social change is sexual violence. Sexual harassment has "a wide scope both verbally and in writing, physically and non-physically, starting from verbal expressions (inappropriate words, sexual jokes and so on). So that sexual violence is often

regarded as a violation of the norms of decency. As a result of this shift, many cases of sexual violence were not handled legally. The problem that often arises is the unavailability of good protection for victims and witnesses. The limited regulation on sexual violence in the Criminal Code has also resulted in many cases of sexual violence not being processed by law, so that perpetrators cannot be charged and sexual violence continues to occur.

Cases of sexual violence are often seen as crimes against decency alone. Because in the Criminal Code, sexual violence is considered a violation of the norms of decency. As a result of this shift in Norm values, various types of crimes related to sexual violence need to be normalized in the law, which is considered to pay attention to the punishment for acts of sexual crime that starts with forms of sexual violence that have not been accommodated in the form of existing laws and regulations, including sexual violence. non physical. Therefore the drafting of a rule of law, namely the Law on Crime of Sexual Violence, is considered to have good implications for aspects of social life. It is hoped that the existence of the Sexual Violence Crime Law will establish an integrated community service system in an effort to prevent cases of sexual violence, including non-physical sexual violence. So that indirectly, the Sexual Violence Crime Law will help the community to be mobilized on their awareness to further increase the values of decency in life and not tolerate crimes of sexual violence in any form (anti-sexual violence). [11]

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Sexual harassment is any unwanted behavior, in the form of demeaning, humiliating, harassing, and/or attacking a person's body, and/or reproductive function, due to a difference in power that results in psychological and/or physical suffering including that which interferes with a person's reproductive health. According to the Sexual Violence Act Number 12 of 2022, sexual violence is any act that fulfills the criminal elements as regulated by law. Article 2 of the Sexual Violence Crime Law regulates the Crime of Sexual Violence which is based on the principle of respect for human dignity and worth, the principle of non-discrimination, the best interests of the victim, justice, benefit and legal certainty. It needs to be underlined that the Sexual Violence Crime Law prioritizes human rights by using the principle of respect for human dignity. Not only women but also men and transgender women, whether they are children, adolescents or adults, can become victims of sexual violence. From a social perspective, whether people are educated or not, poor or rich, using any style, including wearing the hijab, can become victims.

Before the Sexual Violence Crime Law was formed, there were no provisions regarding criminal acts regarding sexual violence/harassment, both physical and non-physical. The Criminal Code itself only regulates criminal acts that are almost similar, such as the act of Violating Decency contained in Article 281 paragraph (1) and Obscenity in Articles 290, 292, 293, 294, and 296. The problem is that criminal acts violating decency and obscenity can only reach acts non-penetrative (physical) sexuality, and not reaching out to the non-physical. Therefore, before the Sexual Violence Crime Law was formed, there was a legal vacuum regarding non-physical sexual harassment. An example of a case that can be seen regarding non-physical sexual harassment which cannot be punished because there is no Sexual Violence Crime Law yet, is the case of a Starbucks coffee shop employee who peeked on female visitors and was recorded by his colleague. Perpetrators who spied on female visitors with a sexual smell (sexual harassment) could not be punished because there were no regulations governing it at that time. Meanwhile, his colleague who recorded and distributed the video on social media is subject to Article 45 paragraph 1 in conjunction with Article 27 paragraph 1 of Law Number 19 of 2016 concerning Information and Electronic Transactions. [12]

Non-physical sexual harassment is currently regulated in Article 5 of the Sexual Violence Crime Law, which reads Anyone who commits non-physical sexual acts aimed at the body, sexual desire, and/or reproductive organs with the intention of demeaning a person's dignity based on sexuality and/or decency, shall be punished for non-physical sexual harassment, with a maximum imprisonment of 9 (Nine) months and/or a maximum fine of IDR 10,000,0000 (ten million rupiah). Meanwhile, the definition of non-physical sexual harassment according to the Sexual Violence Crime Law itself is a statement, gesture, or activity that is inappropriate and leads to sexuality with the aim of humiliating or humiliating. Article 7 of the Sexual Violence Crime Law emphasizes that non-physical sexual harassment as referred to in Article 5 is a complaint offense. So without reports of victims or parties who feel aggrieved the crime of non-physical sexual harassment cannot be punished. However, in a comprehensive procedural law arrangement starting from the stages of investigation, prosecution and examination at court hearings while still paying attention to and upholding human rights, honor and without intimidation.

Examples included in the crime of non-physical sexual harassment are comments, teasing, jokes, leering, whistling, body gestures, or asking things of a sexual nature that are unwanted or make the victim uncomfortable. In addition, there is also sexual violence on an electronic basis, namely recording and/or taking sexually charged pictures or screenshots against the will or without the consent of the person who is the object of the recording or images or

screenshots, transmitting electronic information and/or documents, electronically charged sexually against the will of the recipient directed against sexual desire. If the victim is a child or person with a disability, even though there is a will or approval as referred to above, the sentence cannot be erased. The perpetrator communicates several types of verbal messages to the victim, including sounds such as a kiss, a long distance kiss or a whistle. Second, comments that generally comment on body image or words that are not offensive but are said to offend, such as greetings. There are also those who directly make vulgar remarks about their victims. Besides that, excessive eye contact also goes into harassment because it causes discomfort to those who are seen. For example, someone who looks down on others.

The Sexual Violence Crime Law provides a complete definition of verbal or non-physical harassment, Article 1 paragraph (1) Criminal sexual violence is any act that meets the characteristics of a crime mentioned in the law and other acts of sexual violence described based on the law. In addition, Article 4 paragraph (1) Crimes of sexual violence include: a) non-physical sexual harassment; b) physical sexual harassment c). compulsory contraception; d) forced sterilization; e) forced marriage; f) sexual harassment; g) sexual harassment. [13]

B. Effectiveness of Non-Physical Sexual Violence Regulation in Indonesia

Non-physical sexual harassment is one type of sexual violence crime regulated in the Sexual Violence Law. Article 5 of the Sexual Violence Crime Law stipulates that perpetrators of nonphysical sexual acts can be sentenced to up to 9 months in prison. Any person who commits nonphysical sexual acts directed against the body, sexual desires, and/or reproductive organs with the intention of degrading the dignity and dignity of a person based on his sexuality and/or decency, shall be convicted of nonphysical sexual harassment, with a maximum imprisonment of 9 (nine) months and/or a maximum fine of IDR 10,000,000.00 (ten million rupiah). Article 7 further stipulates that nonphysical sexual harassment is a complaint offense. Referring to the explanation of the Law, what is meant by nonphysical sexual acts is statements, gestures, or activities that are inappropriate and lead to sexuality with the aim of degrading or humiliating. This includes non-physical sexual harassment such as comments, teasing, teasing, joking, whistling, body gestures, or asking sexual things that are unwanted or make the victim uncomfortable. [14]

Determination related to non-physical sexual harassment must be a parameter in determining whether the act is included in the offense. Make subjective parameters objective, related to mens rea errors. Just as the insult of his intimate organs is said to smell of salted fish, it is also degrading, there is intentionality or guilt. Non-physical sexual harassment is subjective. A clear benchmark is needed whether a word conveyed falls into the category of non-physical sexual harassment or not. This of course must see the presence or absence of mens rea elements of guilt as a basis for accountability for the perpetrator. Mens rea related to non-physical sexual harassment in the Sexual Violence Crime Law. [15] If not alpha is intentional. If we look at this formula, this is intentional, because there are words that must be interpreted as intentional. [16]

The Sexual Violence Crime Law is an effort to reform the law to prevent, deal with all forms of sexual violence, protect, and recover victims of sexual violence. This law reform has the objectives to prevent all forms of sexual violence, Handle protect, and recover victims, Carry out law enforcement and rehabilitate perpetrators, Realize an environment without sexual violence, and Ensure the non-recurrence of sexual violence. The Sexual Violence Crime Law is presented as a legal umbrella that protects victims of sexual violence. To get handling, protection, and recovery, of course, sexual violence that occurs must be revealed and reported. [17] Moreover, there are a number of types of criminal acts that constitute a complaint offense (or the prosecution of the crime depends on the consent of the aggrieved or victim), including non-physical sexual harassment, some physical sexual abuse (article 6 letter a), and electronic-based sexual violence unless the victim is a Child or Person with a Disabilities. [18]

Conclusion:-

Based on the description regarding the regulation of non-physical sexual violence crimes, it can be concluded that the main cause is based on the shift in decency values that exist among Indonesian society. Cases of sexual violence are often seen as crimes against decency alone. Because in the Criminal Code, sexual violence is considered a violation of the norms of decency. As a result of this shift in Norm values, various types of crimes related to sexual violence need to be normalized in the law, which is considered to pay attention to the punishment for acts of sexual crime that starts with forms of sexual violence that have not been accommodated in the form of existing laws and regulations, including sexual violence. non physical. Therefore a legal regulation was drafted, namely the Law on Crime of Sexual Violence, which is considered to have good implications for aspects of social life. However, based on the results of this study, related to the effectiveness of regulation of non-physical sexual violence crimes in

Indonesia, it can be seen that Articles 5 and 7 of the Law on Crimes of Sexual Violence are considered to have no legal benefit. The Law on Sexual Violence is a progressive legal product of law-making officials who do not pay attention to the technicalities of its application in court. In responding to social change with a shift in decency values, ideally legal products issued must be based on facts in society (responsive legal approach). However, this ideal legal product also has a weakness because it has the potential to cause victims before the formation of the law is implemented. Therefore, in response to punishment for non-physical sexual violence, it is still carried out using a progressive legal approach, but it must be carried out through a long process that takes into account the balance of *das sein* and *das sollen* as well as the three legal principles: justice, certainty and benefit.

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