

Legal Review Of The Framework "Without Consent" In Permendikbudristek Number 30 Of 2021 Related To Sexual Actions In Higher Education

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Abstract

Sexual violence on college campuses has become an urgency, initiated by various parties, especially students. In response to this, the Minister of Education of Indonesia issued Regulation of the Minister of Education, Culture, Research, and Technology Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education . However, some people appear to have repudiation against the regulation, concerning the phrase "without consent", which seems to be allowing immoral actions and violating religious norms. This study is aiming to examine the meaning of the phrase "without consent" based on the regulatory context and analyze the legal protection provided. Normative legal research was used for this study. The results show that the phrase "without consent" in this case means when sexual violence occurs because of coercion and without the consent of the victim. And when it does happen, this regulation provides significant legal protection to the victims. The phrase "without consent" provides clear parameters for cases to go through a legal process, as well as the establishment of a task force as the party responsible for handling sexual violence mechanisms from receiving reports, resolving cases, and providing recovery facilities for victims.

Keywords: *Violence, Sexual, Consent*

Introduction

Sexual harassment is a form of violation of the principle of decency, and this form of violation is a problem faced by Indonesia as a national legal problem, and even a problem in other countries and is categorized as a global problem.¹ Not infrequently this sexual harassment then spreads into an act of sexual violence. The definition of sexual violence itself can be interpreted as sexual acts or contact that is carried out both verbally and physically which is not desired by either party.² The definition of sexual violence itself can also be found in the Criminal Code (KUHP), in chapter XIV on crimes against decency. Article 285 of the Criminal Code states that anyone who

¹Romli Atmasasmita. (1995). *Capita Selecta Criminal Law and Criminology* . Bandung: Mandar Maju, p. 103

²Saimima, Hadibah Zachra Wadjo and Judy Marria. (2020). Legal Protection for Victims of Sexual Violence in the Context of Realizing Restorative Justice. *Belo Journal* , p. 50

forces a woman to have intercourse with him outside of marriage, accompanied by violence or threats of violence, can be punished with imprisonment for twelve years, for acts of rape. Then in article 289 it also states that anyone who forces someone, whether accompanied by violence or threats of violence, to commit or allow obscene acts to occur, can be sentenced to imprisonment for a maximum period of nine years, because his actions attack the honor of decency. Women are often victims of sexual violence. Even victims of sexual violence do not only happen to women or adult women, but also even occur to children. The possible environment for sexual violence to occur is very wide, it could be in the family environment, office environment, or even the educational environment. At present, sexual violence in the educational environment is in the spotlight, especially in the higher education environment. Based on Komnas Perempuan's 2021 annual records, most sexual violence and discrimination based on educational level occurred in universities or colleges. In fact, from 2015 to 2020, as many as 27% of complaints of sexual violence received by Komnas Perempuan were cases that occurred in tertiary institutions. This percentage is compared to all complaints of sexual violence that occurred in educational settings. Through a survey by the Directorate General of Higher Education and Research and Technology in 2020, as many as 77% of lecturers stated that sexual violence did occur on campus and as many as 63% of them did not report known cases.³ Even cases like this are often covered up by the university itself. Sexual violence that occurs in the educational environment itself is currently a hot topic of conversation. And the main focus is in the college environment. The survey data from the Directorate General of Higher Education and Research and Technology regarding sexual violence that occurred on campus also showed quite dominant data. The data obtained through the survey method certainly comes from information that is factual, true and real.⁴ One example of a case that becomes an urgency factor in preventing sexual violence in tertiary institutions is the case of a female student at a university in Riau Province, who was the victim of harassment by a related campus lecturer. The handling of this problem is not carried out properly, due to the lack of existing protection for victims, and it is not clear which institution should solve this problem based on law. Which ultimately causes the environment for students to learn to be unsafe and uncomfortable. From these various data and incidents, it is necessary to realize the urgency of preventing sexual violence in the higher education environment. Seeing the urgency that exists, the Ministry of Education and Culture of the Republic of Indonesia, as a ministerial institution that manages to oversee the education sector in Indonesia, then issued a ministerial regulation (Jonathan, A. 2021). In August 2021, the Ministry of Education and Culture passed the Regulation of the Minister of Education, Culture, Research and Technology (Permendikbud Ristek) Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education. The purpose of this

³National Commission on Violence Against Women, Fact Sheet on Sexual Violence in Educational Environments National Commission on Violence against Women, 27 October 2020, page 1

⁴Islamy, Izzul. (2019). Survey Research in English Language Learning and Teaching. *Muhammadiyah University Purwokerto* , page 2

Permendikbud Ristek is clear to create safe and comfortable learning conditions in tertiary institutions, which are free from crimes of sexual violence. The actions of the Indonesian Ministry of Education and Culture in passing this regulation are actually believed to fulfill the principle of responsive legal theory by Nonet and Selznick, where law is open to people's aspirations in making regulations and policies.⁵ This can be seen from how the urgency and problems that have been voiced by the community have been responded to by the enactment of a legal regulation that can provide legal protection in cases of sexual violence in tertiary institutions. The presence of this regulation reaped a lot of praise and positive reactions from the public. But then there are also cons and rejection of this issued ministerial regulation. This refusal occurred because of the choice of words contained in article 5 paragraph (2) in the Minister of Education and Culture and Research and Technology Number 30 of 2021, which includes the phrase "without consent" as a term to indicate *sexual consent*.⁶ This phrase then makes the rules multi-interpreted for certain groups. There is another understanding that is captured by certain parties or groups by assuming that, when an action that is prohibited in a ministerial regulation obtains approval, then it is an immoral act that is permissible or an attempt to legalize free sex. While immoral acts and free sex itself are contrary to religious values in Indonesia, so that they overlap with religious norms in society.

The reason for the rejection of this regulation is the rationale for the research being conducted. Previous research conducted by Bakhrul Amal in 2021 raised the title "Legal Review of the Phrase "Without Victims' Consent" in Permendikbud Number 30 of 2021 Concerning the Prevention and Handling of Sexual Violence. This study formulates the problem of the meaning of the phrase "without the victim's consent" and also the elements of offense contained in the article containing this phrase. This research will also first examine the meaning of the phrase "without consent" referred to in this article, and try to find the key to the existing cons. In contrast to previous research that examined the elements of offense, this research will then continue to discuss the meaning of the phrase "without consent" to whether this phrase has an effect in providing significant protection to victims of sexual violence.

Also through this research, a problem was formulated, namely related to "What is the meaning of the phrase "without consent" referred to in the Minister of Education and Culture and Research and Technology Number 30 of 2021?" and also "How does Permendikbudristek Number 30 of 2021 provide protection for victims of sexual violence on campus, especially with the phrase "without consent"?. With the discussion of these two issues, it is hoped that this can become a reference for new views on the rejection that has occurred, and can also support the implementation of

⁵ Handoyo, Budi. (2018). Political Configuration of Indonesian Land Law in the Perspective of Responsive Law Theory. *At-Tasyri: Scientific Journal of Muamalah Study Program* . 10(2), 21-38, p. 25

⁶ Polemic Permendikbud No 30 of 2021, available on the website <https://www.kompasiana.com/anggraenika7848/619e473a62a70460421cd4f2/polemik-permendikbud-no-30-tahun-2021>

ministerial regulations for the prevention of sexual violence in the educational environment, especially in tertiary institutions (Sentoso, 2021).

Methods

In his book, Soerjono Soekanto argues about the definition of the research method, as a scientific activity carried out using a basic analysis and also a composition that is arranged in such a way, with an orderly and coherent structure, according to methodological and consistency, with the aim of being able to find and reveal the truth. ⁷ The type of research used as the methodology in this study is the normative legal research method. By using normative legal research methods, the type of data used as the main data source is secondary data, with various literature and literature studies, as well as binding legal materials. The laws and regulations used in this research are:

- A. Criminal Code
- B. Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education

Data materials that are also used are secondary data materials in the form of various legal literature, journals and scientific articles, books, and expert opinions. In analyzing the object of this research, grammatical methods will also be used with the aim of being able to understand the intent and purpose of the relevant ministerial regulations. With this analysis and research methods with the aim of being able to utilize the collected data in order to produce structured research effectively and efficiently and support the achievement of research objectives.

Results And Discussions

A. Definition of the Phrase "Without Consent"

Sexual violence that occurs in the college environment is considered a problem that is categorized as an urgency and needs a solution. The Minister of Education of Indonesia, Nadiem Makarim, then issued the Minister of Education and Culture for Research and Technology Number 30 of 2021 concerning Prevention of Sexual Violence in Higher Education Environments as one of the efforts to maintain a safe campus as a place for student learning. However, this regulation also caused polemics among the public, through the phrase "without approval" in certain articles. Previously, the definition of sexual violence itself had been included in the Criminal Code, and usually sexual violence was more often referred to as sexual harassment. Quoting the *United Nations High Commissioner for Refugees* (UNHCR) definition of sexual violence is when an act of violence is committed against someone based on a certain sex, which in this case includes rape, human trafficking, forced marriage, and also

⁷Soekarno, S. (2008). Introduction to Legal Research, Cet. 3. Jakarta: University of Indonesia Publisher, p.10

includes violence related to occur in the family and community environment.⁸ According to Mac Kinnon in his book " *Sexual Harassment of Working Women* ", sexual harassment is when there is unwanted action in terms of fulfilling sexual needs in the context of a relationship where one person is more dominant than the other.⁹ Then in the Regulation of the Minister of Education Number 30 of 2021 it also includes the meaning of sexual violence itself. Sexual violence is defined as any action taken by a person that humiliates, insults, harass, attacks a person's body or reproductive function, due to an imbalance in power relations or a person's gender which results in psychological and physical disturbances which include disruption of the victim's reproductive health and inhibition of a person's opportunities to be able to carry out the implementation of education safely and optimally.¹⁰ From the several definitions given, there are several similarities that can be identified. Articles 288 and 289 of the Criminal Code emphasize the existence of a coercive situation. Then the definition given by UNHCR, Mac Kinnon and even the definition in the Minister of Education and Culture explains how sexual violence occurs because there are parties who do not want certain actions to take place. The existence of coercive behavior in every sexual violence according to these various definitions indicates that every violation of sexual violence occurs without the consent of either party. Regarding the agreement that became the polemic found in Article 5 paragraph (2) of the Minister of Education and Culture and Research and Technology Number 30 of 2021. The acts of sexual violence mentioned contained an element of consent including the following actions:

1. When the perpetrator deliberately shows his reproductive organs or genitals to the victim
2. By taking, recording, and/or distributing photos and/or audio and/or visual recordings of victims that have a sexual element
3. The act of *uploading* a photo of the body, personal or personal information of the victim with a sexual element
4. Disseminate information concerning the body and/or person of the victim with a sexual element
5. Transactions or sexual activities that are not approved, which are carried out with inducements, promises, offers of something, or threats to the victim
6. Touching, rubbing, touching, holding, hugging, kissing and/or rubbing body parts against the victim's body
7. The perpetrator took off the victim's clothes¹¹

These actions are included as sexual violence in article 5 paragraph 2, in some letters, not all. These seven actions are considered to have violated conditions without approval. Even conditions without this consent are also clearly regulated, namely when

⁸Fitriyatul, Mella. (2019). Sexual Violence in International Law. *Journal of Jurist-Diction* , p. 2205

⁹Till, Frank J. (1980). *Sexual Harassment: A Report On The Sexual Harassment Of Students* . Washington DC: The National Advisory Council On Women's Educational Programs , p. 5

¹⁰Article 1 paragraph 1, Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education

¹¹Article 5 paragraph 2, Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education

the age factor is immature, then the situation with the victim experiences coercion or threats, the victim's condition is under the influence of drugs or alcohol, the victim is sick, unconscious or asleep, the victim's physical and psychological factors are vulnerable, the condition of the victim with temporary paralysis, as well as the condition of the victim who was in a state of shock. It is with the phrase "without agreement" that polemics and rejection arise in society. According to the *online* Big Indonesian Dictionary (KBBI) the word "without" means neither with nor without, which indicates that there is an element that is not there followed by the next conjunction. The word "agreement" itself in KBBI *online* means a statement of agreement, agreement, agreement, justification. When combined with the phrase "without consent" this means not with a statement of agreement, not with justification. The principle of *consent* itself is how in an event or action involving the parties morally giving a form of consent that is given consciously and *validly* and under conditions where neither party suffers significant losses.¹² Even when a person is in a state of lack of ability to protest or put up a fight before showing a reaction to an action that is happening to him, it cannot be categorized as giving *consent*, in this case it is concluded that being silent and not giving a reaction does not mean showing *consent*.¹³

The concept without consent mentioned in this Permendikbud provides limits on what constitutes a sexual violence offense. Given the definition of sexual violence also emphasizes coercion or threats given, and also occurs without any desire. Providing clear boundaries, when someone without a statement of agreement or without their *consent*, experiences things as stipulated in article 5 paragraph 2 of the Minister of Education and Culture and Research and Technology Number 30 of 2021, then at that time the victim also gets protection for the sexual violence he experienced. However, when there is an element of consent or *consent* given in terms of what is called sexual violence in this regulation, it does not mean justifying it. Sexual acts that occur on the basis of conscious consent are not included in sexual violence, but are forms of immoral acts that include adultery, prostitution, trafficking, and/or pornography. The regulations can also be found clearly in Indonesian legislation, such as adultery cases regulated in Article 284 of the Criminal Code, prostitution cases regulated in Article 296 of the Criminal Code, and pornography cases regulated in Law Number 44 of 2008 concerning Pornography. There is no legal conflict or derogation that occurs with the issuance of this Permendikbud against other laws, because the main elements of violation regulated by each regulation are different.

B. Legal Protection Provided by the Minister of Education and Culture and Research and Technology Number 30 of 2021 for Victims of Sexual Violence in Higher Education, Especially with the Phrase "Without Consent"

Prior to the issuance of the Minister of Education and Culture and Research and Technology Number 30 of 2021, it was stated that there were no specific national

¹²Archard, David. (2019). *Sexual Consent*. Oxfordshire: Routledge, p. 9

¹³Annika M. Johnson, Stephanie M. Hoover. (2015). Affirmative Sexual Consent and the Literature on Traditional Sexual Scripts and Rape Myth. *Pure Insights*, 4(5), p. 2

regulations or rules or even that there was a legal vacuum governing sexual violence, which particularly occurred in the higher education environment.¹⁴ In general, the rules regarding sexual violence have been regulated in Article 285, Article 286, and Article 289 of the Criminal Code, but the blurring of the boundaries of what constitutes a category of sexual violence is a problem which causes judges in handling cases to use the principles of the criminal law expert.¹⁵ If we look back at the articles that regulate the Criminal Code, it is more inclined to the violation of rape. In addition, the formulation of this regulation cannot provide protection for victims of sexual violence. Sexual violence in the Criminal Code is only seen as an immoral crime, even though sexual violence should be a crime that is more than mere decency.¹⁶ The impact of sexual violence needs to be considered because the impact is traumatic in nature which can last a lifetime, which can also destroy the credibility, or the unity of a victim's life. Sexual violence which is seen as a violation of immoral norms in the Criminal Code itself, can be considered to reduce the level of criminal acts that occur, even creating the view that sexual violence is only a matter of morality.¹⁷ In Indonesia at this time, there is a Draft Law on the Elimination of Sexual Violence (RUU PKS) which is quite crucial and has been actively promoted by many parties. However, apart from support for the RUU PKS, there are also cons from the public who say the RUU PKS ignores the values of religious norms in society.¹⁸ Similar to the polemic about Permendikbudristek Number 30 of 2021 which is considered to have legalized adultery, the view of the RUU PKS is no different. However, until now there is still no sign of ratification of the RUU PKS as the end point for responding to sexual violence in Indonesia.¹⁹

Without clear regulations, victims of sexual violence on campus often do not report what happened to them. This is due to fear for the survival of his life while studying or studying on campus, in addition to the reasons to protect his good name, and the lack of restrictions on what constitutes sexual violence on campus.²⁰ Sexual violence itself can occur, one of which is the imbalance of power relations, when someone feels more dominant in controlling, then there is a possibility of using that

¹⁴Susanti, Ariani Hasanah Soejoti and Vinita. (2020). Discussion of Restorative Justice in the Context of Sexual Violence in Campuses, *Deviance: Journal of Criminology* , 4(1), 67-83, pp. 78

¹⁵Sitorus, Jeremy Chandra. (2019). *Quo Vadis* , Legal Protection for Victims of Sexual Harassment on Campus. *Journal of Lex Scientia Law Review* , 3(1), 30-39, pp. 34

¹⁶Komnas Perempuan, "Sexual Violence," Komnas Perempuan Info Sheet, <http://www.komnasperempuan.go.id/wp-content/uploads/2012/11/KeKerasaan-Seksual-Kenali-dan-Tangani.pdf>

¹⁷Ratna Bhatara Munti. (2020). Pro-Women Policy Advocacy, Women's Political Agenda for Democracy and Equality, Jakarta: PSKW UI and the TIFA Foundation.

¹⁸Lailisna, Novi Nur. (2021). Polemics on the Draft Law on the Elimination of Sexual Violence (RUU PKS): Critical and Prospective Studies, *An-Natiq: Journal of Interdisciplinary Islamic Studies*, 1(1), 67-74, pp. 71

¹⁹Subarkah, Alfianita Atiq Junaelis and Faiq Tobroni. (2020). The Urgency of Ratifying the PKS Bill on the Instrument for Upholding Women's Human Rights. *Supremacy Hukum Journal of Legal Studies* , 9(2), 90-115, pp. 107

²⁰Nuqul, Annisa Trihastuti and Fathul Lubabin. (2020). Examining Sexual Harassment Victims' Decision Making in Reporting Sexual Harassment Cases. *Journal of Personification* , 11(1), p. 10

power as a shield behind their actions. Looking back at the system at tertiary institutions, lecturers tend to have power relations with students, in this case, it can be in the process of teaching and imparting knowledge, evaluations carried out on students, and of course this is a good and common thing in the world of education. But when that power becomes one of the factors in the occurrence of sexual violence, of course it will be very detrimental for the victims of sexual violence themselves. Even when there are no regulations that clearly protect victims of sexual violence, complaints or reports made by victims of sexual violence on campus are often turned into defamation by the victim.²¹ Incidents like this usually turn the situation into a *victim blaming situation*. But it should also be noted, not all sexual violence that occurs on campus occurs between lecturers and students, even in relationships between students, between educators or educational staff it often occurs. An example of a real case that can be seen is an alleged case of sexual harassment perpetrated by a lecturer against a female student that occurred at a university in Riau, while conducting thesis guidance. This was then reported by the victim to the police station. Even after the report was submitted, the alleged perpetrator denied the accusation, and in return sued the victim for Rp. 10 billion for defamation committed by the victim. This case was then transferred to the Riau High Prosecutor's Office, and the alleged perpetrator was officially detained by the prosecutor's office on charges of obscenity under Article 289 of the Criminal Code. But in the end, it was decided by the judge, the alleged perpetrator was not proven guilty of the crime charged against him, so he received an acquittal.²² If examined further, cases like this are very common. It should be noted, the crime of obscenity has a very different definition from violence or sexual harassment. Just protection from the Criminal Code is not enough to be a shield for students on campus to be protected from sexual violence. The lack of evidence and the wide coverage set out in the Criminal Code cannot provide specific protection for sexual violence that occurs in tertiary institutions. Even the case itself is real and occurs in a number of cases that are not small.

Rules to prevent sexual violence from happening on campus are usually contained in the rector's regulations at each tertiary institution. However, even though there are prevention efforts through the campus bureaucracy, if the existing bureaucracy is convoluted and complicated, it will certainly be detrimental to the victim, both in fulfilling the victim's rights and/or in realizing justice for the victim.²³ To provide legal certainty in this case, a Minister of Education and Culture issued a regulation on the prevention of sexual violence on campus. Even before this Permendikbud was legally enacted, University of Indonesia (UI) students together

²¹Suherman, Andika et al. (2021). Analysis of the Functions of Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 in Preventing Sexual Violence on Campus. *Wahana Pendidikan Scientific Journal*, 7(7), 173-181, p. 175

²² Complete Chronology of the Exemption of the Sexual Harassment Case of Syafri Harto Dean of the UNRI, available on the website https://nasional.tempo.co/read/1577206/kronologis-lengkap-vonis-gratis-kases-pelecehan-sexual-syafri-harto-dekan-unri?page_num=3

²³Enjoy. (2020). For the Good Name of Campus VS Victim Protection: Cases of Sexual Violence on Campus. *Qawwam: Journal for Gender Mainstreaming*, 14(2), 37-53, pp. 48

with an alliance of Student Executive Boards (BEM) from various university campuses had been working hard for the Permendikbud to be ratified and enforced immediately.²⁴

This Permendikbud on the prevention of sexual violence in educational settings, especially in tertiary institutions, provides clear definitions and boundaries of what constitutes a category of sexual violence. The Minister of Education and Culture even added an element without consent to several actions that were categorized as sexual violence. The intended action is clearly detailed in article 5 of the Minister of Education and Culture Regulation on Research and Technology Number 30 of 2021. This article also provides a legal umbrella for victims of sexual violence on campus. Looking back at the survey by the Directorate General of Higher Education and Research and Technology regarding the recognition of 77% of lecturers that there was sexual violence that occurred on campus, it did not only involve students as the only victims, but also members of the campus environment. For this reason, Permendikbud Number 30 of 2021 also provides protection not only for students, but also for educators in tertiary institutions, as well as educational staff, from supervisors of educational units to even cleaners, campus residents, and also the public who interact with parties related in tertiary institutions in the implementation of education, conducting research, and implementing community service.²⁵

Prevention and handling of sexual violence (PPKS) on campus or higher education requires the involvement or participation of various parties.²⁶ The Permendikbud regarding PPKS itself is described into general provisions, prevention efforts, handling regulations, the formation of a task force, the rights of victims and witnesses, as well as monitoring the implementation of regulations and evaluation. In the general provisions themselves, from the start it has provided definitions and also limits on what constitutes sexual violence. Even the phrase "without consent" itself is used with the aim of being able to clearly determine the form of sexual violence that occurs later will be processed when one of the parties, in this case is the victim, feels aggrieved for the actions committed against him, under coercion and not on the basis of his wish.

The prevention efforts that have been prepared, in its realization, require efforts from universities, educators as well as teaching staff, as well as from the students themselves. Universities are required to have a campus policy as well as guidelines regarding PPKS, and the formation of a task force, as a form of strengthening governance, and of course followed by other forms of support in seeking prevention by the universities themselves. Then the efforts of educators, teaching staff, and students are also needed in the form of maintaining and limiting unnecessary

²⁴Hamid, Abdul. (2022). Legal Perspective on Efforts to Anticipate and Resolve Sexual Violence in Higher Education. *Journal of Al' Adl Law* , 14(1), 42-64, pp. 55.

²⁵Article 4, Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education

²⁶Oslami, Achmad Fikri. (2021). Analysis of Permendikbudristek Number 30 of 2021 in Efforts to Prevent Sexual Violence. *Journal of Sharia and Islamic Justice* , 1(2), 101-119, p.116

interactions outside the area and/or outside lecture hours, as well as maintaining the boundaries of interests outside the learning process. When it is proven that sexual violence has occurred on campus, then the handling that should be carried out is focused on assisting, protecting and recovering victims, as well as sanctions imposed on perpetrators. Assistance provided to victims is in the form of legal assistance and advocacy, counseling and guidance, even meeting the needs of victims with disabilities. Protection is a form of handling that must be carried out by universities for victims, even to the victim's recovery process. Reporting cases of sexual violence does not eliminate the opportunity for victims to continue their education. For the perpetrators themselves, they must be subject to administrative sanctions, from mild to severe, in accordance with the recommendations of the task force.

The formation of a task force mentioned in the Minister of Education and Culture is one of the crucial points in preventive and curative efforts for sexual violence on campus.²⁷ It is known that this aspect of acts of sexual violence always has one of the major obstacles to how victims can obtain their rights to justice given, remedies provided, and guarantees not to repeat acts of sexual violence.²⁸ And this effort was then given Permendikbudristek Number 30 of 2021 through the provision and establishment of a task force at this tertiary institution itself. Members of this task force themselves must go through a selection process by the committee by fulfilling the requirements given in accordance with existing regulations. The selection committee and task force formed involve educators, educational staff and students in carrying out their duties and functions. Complaints and reports when there are allegations of sexual violence in tertiary institutions will be received by the task force, which will then be followed up with an examination by the task force itself. Then from the results of the examination carried out, a series of conclusions and recommendations will be given. The recommendation referred to in this case is that if it is proven that sexual violence has occurred after an examination has been carried out, then the task force needs to provide suggestions for recovery facilities for victims, even the task force itself needs to facilitate this form of recovery, then there are sanctions against the perpetrators, as well as recommendations for preventive actions so that such cases are not repeated.

The issuance of Permendikbudristek Number 30 of 2021 is considered to be an update of the existing regulations governing sexual violence, especially in tertiary institutions. Judging from the Theory of the Legal System put forward by Lawrence M. Friedman, it can be seen how a regulation can fulfill the principles of justice and legal certainty in its application. There are 3 (three) important elements in this theory, namely legal structural elements, legal substance elements, and cultural elements.

²⁷Munir, Agus Qomaruddin, et al. (2020). Design of the Task Force Activity Management Application for Handling Women and Children's Problems. *UNRIYO National Seminar Journal* , 2(1), 457-463, p. 458

²⁸These rights refer to the International Convention on the Protection of All Persons from Enforced or Involuntary Disappearance, E/CN.4/2005/WG.22/WP.1/ REV.4), which was signed by the Indonesian government on 27 September 2010 but had not been ratified until the time this Academic Paper was written.

²⁹There are law enforcement agencies and institutions in implementing regulations, in this case a task force is formed in an effort to prevent and deal with sexual violence in tertiary institutions, and when protection is provided in tertiary institutions, of course the leaders of the tertiary institutions themselves are also involved. Legal substance in this case includes how legal norms and written or unwritten rules reflect the problems and aspirations of society.³⁰ This shows that substance is also in harmony with people's lives, which are the habits and opinions of law enforcers, or of the community itself.³¹ It's just that there needs to be consistent implementation that is firm and adheres to legal principles as the embodiment of the principles of justice and certainty, as stated in this legal system theory. According to Satjipto Rahardjo about the theory of legal protection, is when a law is issued to be able to protect a person's rights and interests, as well as provide a guarantee of rights that should be given equally to the whole community.³² With this Permendikbud PPKS, the handling of cases of sexual violence on campus is no longer based on the opinion of legal experts but rather there is a clear legal basis for creating a college environment that is healthy and free from sexual violence. And also with the PPKS Permendikbud too, victims can boldly report incidents of sexual violence, without any fear or confusion about the legal certainty provided. The involvement of various parties, firmness and consistency in carrying out government regulations is very much needed to maintain tertiary institutions free of sexual violence, for the campus to be used as a safe space for students to get education as children of the nation.³³

CONCLUSIONS

The phrase "without consent" in Article 5 paragraph 2 of the Minister of Education and Culture and Research and Technology Number 30 of 2021, has a purpose that is in line with the definition of sexual violence itself, which is when unwanted actions occur in the context of fulfilling sexual needs, or regarding matters of a sexual nature. The absence of desire and/or consent shows how the conditions for an action can be followed up as sexual violence that occurs especially in the tertiary environment. Through the research, it can be concluded that when there is an element of consent in related incidents, it means that the handling of such cases is not the handling of cases of sexual violence, but can be categorized as cases of adultery, prostitution, pornography, each of which has separate statutory regulations governing it. And it is necessary to know, of course, that the existing laws and regulations in

²⁹ Hutomo, Priyo. (2021). Legal System Theory Perspective in the Reform of Military Penitentiary System Arrangements. *Legacy: Journal of Law and Legislation* , 1(1), 46-68, pp. 49

³⁰ Wahyuningsih, Kingkin. (2011). Reconstruction of Securities Law in the Development of the National Legal System. *Fiat Justisia Journal of Law* , 5(3), 329-341, pp. 337

³¹ Yudho, Winarno & Heri Tjandrasari. (2017). Legal Effectiveness in Society. *Journal of Law and Development* , 17(1), p. 57

³² Moertiono R. Juli. (2021). Home Ownership Credit Agreement in the Perspective of Legal Protection Theory. *Research Journal of All Fields Of Science J-Las*, 1(3), 252-262, p.257

³³Munir. *Ibid* ., p. 116

Indonesia have correlations and principles that relate to one another. Emphasizing the element of "without consent" is certainly not the basis for being able to legalize immoral acts, as those circulating as polemics and causes of rejection in society.

Legal protection in Indonesia still does not fully provide significant protection for victims of sexual violence, especially in tertiary institutions, both from the Criminal Code or the invalidity of the PKS Bill in Indonesia. However, the ratification of Permendikbud Number 30 of 2021 brings significant protection, because its application is specifically in the tertiary environment and also provides clear parameters for the scope of protection, regarding what categories of acts of sexual violence are. Through this research, it was concluded that the protection provided by the phrase "without consent" is also very clear, is to provide boundaries and certainty, so that the handling of cases of sexual violence can be processed, starting from the entry of complaints, to the resolution of cases and recovery of victims. The mechanism provided is also channeled through the formation of a task force that guarantees protection from granting the right to truth and justice, to guaranteeing the right to recovery for victims. If it is concluded, the mechanism for handling cases of sexual violence in tertiary institutions is the submission of complaint reports, an examination by the task force, an examination of whether it is proven that the reported actions included sexual violence in accordance with Article 5 paragraph 2 of the Minister of Education and Culture Regulation Number 30 of 2021. After the inspection, the task force draws conclusions based on the results of the examination and provide recommendations, provide facilities for victim recovery, and take preventive measures so that incidents do not recur. Every step of handling a case does not only revolve around the realm of higher education, but has become a realm regulated in legislation, namely Permendikbud Number 30 of 2021.

With the enactment of Permendikbudristek Number 30 of 2021 this shows that in fact, sexual violence in tertiary institutions does require protection. Although there is polemic about this regulation legalizing adultery, especially with the phrase "without consent", this research concludes that the phrase "without consent" is not a phrase that can legalize adultery or other immoral acts, but rather defines the category of acts of sexual violence. There needs to be support from the community and campus residents to be able to properly implement Permendikbudristek regulations Number 30 of 2021. It is important to have a regulation that regulates acts of sexual violence in tertiary institutions and even in Indonesia. Through the enactment of Permendikbudristek Number 30 of 2021 it shows that the Draft Law on the Elimination of Sexual Violence (RUU PKS) must also be ratified immediately. When efforts to prevent sexual violence in tertiary institutions can be handled properly, it is important that efforts to prevent and deal with sexual violence are then extended throughout Indonesia through the related RUU PKS.

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