Juridical Analysis of Judge's Decision in Criminal Case of Law with Threats of Violence Performed by Adults towards Adult Victims (Study of Decision No. 769/PID.B/2021/PN Rantauprapat)

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Abstract

Obscenity is known as an act that leads to harassing a woman in asdone to achieve self-satisfaction outside bondmarriageso that it violates the rules of decency, obscene acts are subject to Article 290 of the Criminal Code which is punishable by a maximum imprisonment of 7 years.is any act of abuse of physical force with or without the use of means that is against the law and poses a danger to the body, life, and independence of people. The formulation of the problem in this matter is 1. What are the legal regulations regarding obscene acts with legally adult victims? 2. What are the legal considerations of the panel of judges in destroying cases of obscene acts in decision no. 769/pid.B/2021/PN rap? The method used in this writing is using the Juridical Normative Empirical method, which is conducting field research, namely to the Rantauprapat District Court with the interview method, to support the data the author needs, and also taking references from various books, legislation, articles, scientific essays, and other readings that are related to the problems discussed in the preparation of this article. The problem of obscene acts with threats of violence committed by adults against adults in which the article that regulates obscene acts contains article 289 of the Criminal Code concerning "Whoever commits violence, is forced to commit immoral acts and forces others to release their lust will be punished with 9 years." prison". Article 281 of the Criminal Code, the convict is threatened with 2 years and 8 months in prison and a fine of Rp. 4.500.000,- the author takes the example of the case from the decision NO. 769/PID.B/2021/PN RANTAUPRAPAT.

Keywords

obscene acts; threats of violence; adults



I. Introduction

Law is a state tool whose purpose is to bring order, reconcile, and organize the life of a nation, basically the law regulates human relations in society which has a diversity of principles. New crimes that use expertise in the field of computers that have changed the style of conventional crimes into modern crimes, the level and variety of crimes also follow the reality of the development of human life, for example the spread of immoral videos, and so on. One of the most complex problems in our society is the issue of immorality and violence against women. The increase in crime can be seen from the growing number of crimes, both in terms of types, perpetrators, and modes. The law is coercive and determines human behavior in a society where the rules are made by authorized official bodies, which if these regulations are violated it will result in taking action in accordance with certain laws. According to Wiryono Kusmumo, law is the entire

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written and unwritten regulation that regulates the rules and regulations in society and sanctions are imposed for violations. Some legal experts say that law cannot be defined because it has a very wide scope and covers all areas of people's lives which are always experiencing development and change.

Criminal law is part of the overall law that applies in a country which has the basics and provisions regarding actions that should not be carried out and prohibited which are criminal penalties for those who commit crimes.and violating the prohibition can be subject to criminal sanctions. DefinitionAccording to Mezger, criminal law is "legal rules that bind to a certain act and fulfill certain conditions, the consequences can be punished". Thus, it can also be said that criminal law is a system, norms that determine which actions under such circumstances the punishment can be applied to these actions. According to Dr. Abdul Mabruk an Nazar Criminal Law as a collection of legal rules that determine criminal acts prohibited by law, punishments for those who commit, procedures that must be passed by the defendant and his court, according to the punishment assigned to the defendant. Criminal law is divided into 2 (forms) based on the material regulated in it, namely what we hear commonly with Material Criminal Law and Formal Criminal Law.In a criminal case, there must be a victim and a perpetrator, which is the meaning of victims are: "people who are physically and mentally disturbed as a result of the actions of others that are contrary to their own interests or those that are contrary to the interests of human rights, and the definition of perpetrator is a person who commits a crime whose actions violate the rules and legal rules.

The rise of obscenity cases in Indonesia is very disturbing for women and parents because obscene acts can be carried out anywhere when the opportunity arises. An immoral/obscene act is an act that violates the rules of decency where the act is carried out by force to satisfy his lust, in the Criminal Code book II immoral acts related to sexual crimes. Sexual crimes include rape, sexual torture, sexual harassment and others. Recent sexual behavior has disrupted public order in the community and disturbed parents, legal protection for victims of crime can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance. Compensation is something that is given to the injured party to be commensurate with the damage suffered. A criminal act is an act that is not desired by the community and public order, so the action taken is by arresting the perpetrator immediately when the act occurs. In this case the victim belongs to the adult group, according to the compilation of Islamic law article 98 paragraph 1, namely 21 years of age, but according to Law No. 1 of 1974 concerning the Marriage Law, Article 47 paragraph 1, namely 18 years of age, cases of obscene acts accompanied by current acts of violence in the city of rantauprapat where a 42-year-old adult perpetrator who committed an obscene act against a 21-year-old adult woman committed the obscene/immoral act because of an opportunity. Obscenity is a crime that is committed by someone because of their sexual desire to do actions that can arouse lust. In obscene acts, people think that sexual contact is very contrary to social ethical norms. And there are many factors that cause someone to commit this immoral act such as misuse of technology, lack of application of human resources at every level of society, lack of public care about the side effects of obscene acts against the victim, and also the opportunity to commit such acts. The development of human resources is a process of changing the human resources who belong to an organization, from one situation to another, which is better to prepare a future responsibility in achieving organizational goals (Werdhiastutie et al, 2020). In addition to harassing obscene actors, they also often threaten violence so that the victim does not fight back and ask for help from others. The perpetrators of immoral/obscene acts are charged with Article 281 of the Criminal Code concerning "immoral acts" and Article 289 of the Criminal Code concerning committing violence, coercion, and forcing others to give up their lust will be sentenced to 9 years in prison". in article 281 of the Criminal Code, the convict is threatened with 2 years and 8 months in prison and a fine of Rp. 4.500.000,-.

The purpose of this writing is:

- a. To describe the regulation of criminal acts of obscene acts in positive law
- b. To find out the form of punishment for perpetrators of obscene acts.

II. Research Method

The research method that the author uses is the empirical normative juridical method, which is conducting field research, namely to the Rantauprapat District Court with the interview method, to support the data that the author needs, and also library research to take references from various book titles, as well as legislation, articles, scientific essays, as well as other readings that are related to the problems discussed in the preparation of this article. While the problem approach used is the Legislative approach, the Conceptual approach and the problem approach.

III. Results and Discussion

3.1 Definition of Law and Violence against Women

Obscenity is an act that leads to harassing a woman in publicto achieve the satisfaction of sexual desires outside the marriage bondThus, violating the rules of decency, obscene acts are also subject to Article 290 of the Criminal Code. The crime of obscenity is a crime that is contrary to and violates a person's decency and decency within the scope of lust. The reactions experienced by victims of obscenity vary greatly depending on the type of obscene act experienced and the personal reaction of the victim. Therefore, there is no objective measure as a standard criterion for the reaction of women who experience such obscene acts.

Meanwhile, violence is any act of abuse of physical force with or without the use of means that is against the law and poses a danger to the body, life and independence of people, including making people faint or helpless. violence against women (Violence Women) includes all forms of physical, sexual and emotional violence that makes women suffer, including all forms of threats, intimidation and violations of women's rights or freedoms, both openly and hiddenly, gender inequality is still thriving in our society. causing women to be placed in a vulnerable position as objects of violence. a sociologist Romani Sihite asserts that violence against women is generally experienced is sexual violence,

a. Due To Violence

The impact of violence in general is very influential on the life of the next victim, various reactions that arise depending on the type of violence experienced, Some of the worst reactions in women when experiencing violence:

1. The emergence of fear and anxiety, muscle tension, shortness of breath, a form of excessive anxiety in the victim is obsessive-compulsive behavior, in the form of uncontrollable behavior, such as repeatedly washing hands, repeatedly bathing, feelings of fear and anxiety. This can last for 3 years.

- 2. Depression is a reaction in the first week, symptoms experienced such as crying, loss of appetite, difficulty sleeping, tired, feeling guilty, feeling worthless to live, attempted suicide, and feeling empty and no longer having hope.
- 3. Victims will experience disturbances in their social adjustment.
- 4. Sexual dysfunction
- 5. Disorders of the waist and pubic area
- 6. Cause deep trauma

b. Handling and Prevention

Violence can be fatal for the victim, so proper treatment must be carried out on the victim so that the reaction does not drag on and can cause more severe functional disorders, both physically and mentally. The form of treatment for victims in general is a post-mortem examination by a designated hospital at the request of the police so that the victim gets assistance and is handled personally through medical and psychological consultations. Legal action is an action that is also taken to protect women victims of violence for their right to recovery.

1. Accompaniment

By taking into account the following:

- 1) Ability to recognize signs of violence
- 2) Convince of violence
- 3) Give support
- 4) Solving problems and planning next steps
- 5) Prepare the victim for what will happen next
- 2. psychological treatment,
 - 1. releasing all the burdens of feelings and thoughts that are a source of stress
 - 2. Conducting a meeting between the victim and the counselor/psychologist/volunteer who provides assistance. The results of the debriefing can determine whether the victim needs professional staff or not.,
 - 3. Self recovery
 - 4. The development phase is to grow and maintain psychosocial potential, return to work/school, develop hobbies, build relationships.

According to Article 7 of 1984 concerning the ratification of the convention regarding the elimination of all forms of discrimination against women. Discrimination against women is defined as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of reducing or eliminating the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. others by women.

3.2 Legal Basis of Violence and Law on Women in Indonesian Criminal Law Perspective

In Indonesia, the Criminal Code (KUHP) has provided regulations regarding criminal acts in the form of acts of violence but does not specifically regulate acts of violence against women. The formulations contained in the Criminal Code are mostly general in nature, the articles referred to can be seen as follows:

a. Obscenity article 290:

"Threatened with a maximum imprisonment of 7 years:

- To (1): whoever commits obscene acts with a person known to be unconscious or helpless.
- (2): whoever commits an obscene act with a person, it is known that he is not yet 15 years old and has not been able to marry."
- b. Article 289 of the Criminal Code stipulates:

"Whoever commits violence or threatens violence and forces someone to commit an obscene act, will be sentenced to 9 years in prison for breaking the rules of decency.

c. Article 292 of the Criminal Code stipulates:

Adults who commit lewd acts with minors are sentenced to a maximum imprisonment of 5 years.

- d. Article 293 of the Criminal Code stipulates:
 - 1. Any person who uses a gift or an agreement to give money or goods with the aim of deceiving and deliberately persuading a minor to commit an obscene act with him or to allow such an act to be carried out on him, shall be punished by a maximum imprisonment of 5 years.
 - 2. Prosecution is only made on the complaint of the victim
- e. 1. Article 285 of the Criminal Code stipulates:

Whoever by means of violence or threats of violence forces a woman without marital ties or commits rape, the sentence is a maximum imprisonment of 12 (twelve) years.

2. Article 286 of the Criminal Code stipulates:

Whoever has intercourse with a woman who is not his wife and the woman is in a state of unconsciousness or helplessness, is sentenced to a maximum imprisonment of 9 (nine) years.

In this case, as a defendant or victim, they both have human rights, but from the case that will be examined by the author, it is more towards a relative right where this right gives authority to certain people to demand something or do something against the perpetrator of a crime. and a person who commits a crime will show or perform suspicious gestures and behavior. Sanctions obtained by someone who commits a criminal act are aimed at providing a deterrent effect and being responsible for his actions in the eyes of the law. usually Fthe actors causing criminal behavior are poverty, opportunity, innate antimoral nature, disproportionate law.

3.3 Case Position

a. The Prosecutor's Attention

Full name : ARIANSYAH LUBIS aka CACA

Place of birth : Rantauprapat

Age/date of birth: 42 years/ 28 January 1979

Gender : man Nationality : Indonesia

Address : Jalan Dewi Sartika, the education alley, the Siol village, with the southern

Rantau sub-district. Labuhanbatu district.

Religion : Islam

Profession : Self-employed.

The Defendant invited witness Devita and witness Devita Triana Hasibuan Alias Devi said "where is brother's wife", and the Defendant said "Enter inside brother's wife", after

witness Devita Triana Hasibuan Alias Devi entered the hotel room, the Defendant immediately entered and locked the hotel room door and ordered the witness Devita Triana Hasibuan Alias Devi to sit down, on the bed, then took off witness Devita Triana Hasibuan Alias Devi's clothes and the pants of witness Devita Triana Hasibuan Alias Devi, then the Defendant carried out his lewd act, then the Defendant ordered the witness Devita Triana Hasibuan Alias Devi to clean herself in the bathroom, then the Defendant and witness Devita Triana Hasibuan Alias Devi came out of the Hotel room and left the Gotong Royong Hotel, and the Defendant gave Rp. 50,000, - (fifty thousand rupiah) to witness Devita Triana Hasibuan Alias Devi, then the Defendant escorted witness Devita Triana Hasibuan Alias Devi to the Dusun Pinang Lombang Bawah Dam, Sungai Raja Village, Kec. NA IX-X Kab. North Labuhanbatu.

That as a result of the Defendant's actions, witness Devita Triana Hasibuan Alias Devi experienced pain in her genitals as stated in the results of the Examination of Wounds/Visum Et Repertum of the Labuhanbatu Regency Government, Rantauprapat Regional General Hospital, Number: 445/4137/RSUD/2021 dated 10 May 2021, which was made and signed by dr. Tun Ali Ibrahim, SpOG, doctor at Rantauprapat General Hospital, with the results of the examination found as follows: Pubic: There is no visible tear on the hymen. Conclusion: Based on the above conditions, the hymen is intact.

The defendant's actions are as regulated and subject to criminal sanctions in accordance with Article 285 of the Criminal Code, Article 289 of the Criminal Code, Article 286 of the Criminal Code, Article 290 of the 1st Criminal Code.

b. Prosecutor's Demand

- 1. stated that the defendant Ardiansya Lubis Alisa Caca was found guilty of committing a criminal act with violence or threats of violence forcing a person to commit or allow an obscene act, threatened for committing an act that attacks the honor of decency as regulated in article 289 of the Criminal Code.
- 2. Sentenced a sentence of 2 years in prison, reduced as long as the defendant was in detention and ordered the defendant to remain in detention.
- 3. Include evidence
- 4. Stipulates that the defendant is burdened with paying court fees of Rp. 5,000.00 (five thousand rupiah).

c. Legal Facts at the Trial

Based on the case, along with the testimonies of the witnesses, the defendant can be declared to have committed the crime he was accused of, the defendant has been indicted by the public prosecutor with an alternative indictment, so that the panel of judges by taking into account the legal facts mentioned above directly chooses the second alternative charge as referred to in paragraph (1). regulated in article 289 of the Criminal Code, the elements of which are as follows:

- 1. Each person
- 2. With violence or threats of violence, forcing someone to commit or allow obscene acts to be carried out, threatened with committing acts that attack the honor of decency.

The defendant named ARDIANSYAH LUBIS alias (caca) with all of his identities admits his actions, the defendant is a capable and capable person to take responsibility for the consequences of all his actions, the defendant has been proven legally and believes according to law, by force or threat of violence forcing someone to commit or allow obscene acts to be carried out, are threatened with committing acts that attack decency. The

rape of the victim DEVITA TRIANA HASIBUAN as a result of this immoral act the victim named Devina experienced pain in her genitals as the results of the Visum Et Repertum examination of the Labuhanbatu Regency Government, Rantauprapat Regional General Hospital, Number: 445/4137/RSUD/2021 dated 10 May 2021, drawn up and signed by dr. ALI IBRAHIM, SpOG, doctor at Rantauprapat General Hospital, the results of the examination showed that the genitals and blood membranes were still intact. And as a result of the defendant's actions, he experienced pain in the genitals and the victim's left hand suffered bruising.

Against elements with violence or threats of violence forcing someone to commit or allow obscene acts to be carried out. If the elements of article 289 of the Criminal Code have been fulfilled, the defendant must be declared to have been proven valid and convincing to commit a criminal act, the panel of judges did not find things that could eliminate criminal liability, either as a justification or excuse for forgiveness, the defendant was also subject to arrest and detention which legal, then the period of handling and detention must be reduced entirely from the sentence imposed, the defendant is detained based on sufficient reasons, it is necessary to determine so that the defendant remains in detention.

Aggravating circumstances:

- 1. The defendant's actions have not only violated the applicable positive legal norms, but have also violated the norms of decency and decency as well as religion.
- 2. The defendant's actions caused deep trauma for the victim so that it could affect his psychological development.

3.

Mitigating circumstances:

- 1. The defendant regretted his actions and promised not to do it again.
- 2. The defendant has never been convicted.

Considering, that the defendant is found guilty, he is also burdened with paying court fees, taking into account article 289 of the Criminal Code and law number 8 of 1981 concerning criminal procedural law and other relevant laws and regulations.

d. Judge's Decision

- 1. To declare that the defendant Ariansyah Lubis alias Caca is legally and convincingly proven guilty of committing the crime of "attacking the honor of morality" as stated in the second alternative indictment.
- 2. Therefore, the defendant is sentenced to imprisonment for 1 (one) year and 4 (four) months.
- 3. Determining the period of arrest and detention that the defendant has served is deducted entirely from the sentence imposed.
- 4. Determine that the defendant remains in custody.
- 5. Determine evidence in the form of:
 - a) 1 (one) unit of purple yamaha mio soul GT motorcycle with vehicle number plate BK 3888 YAZ, returned to the defendant.
 - b) 1 (one) one black jacket.
 - c) 1 (one) black helmet brand GANZ.
 - d) 1 (one) white mask.
 - e) 1 (one) black bag.
 - f) 1 (one) black trousers.
 - g) 1 (one) blue underpants with blood stains.

- h) 1 (one) black hijab
- i) 1 (one) sprintbad size 5 (five) feet with a light brown king star brand.
- j) 1 (one) pink bed sheet.
- k) 1 (one) sheet of hotel & restaurant cash receipts (GR) with no. BILL 001605 dated 6/5/2021, destroyed.
- 1) 1 (one) banknote of Rp. 50,000.00 (fifty thousand rupiah), returned to witness Devita Triana Hasibuan alias Devi.
- 6. Charged the defendant to pay court fees in the amount of Rp. 5,000.00 (five thousand rupiah).

This was decided in the deliberation session of the panel of judges at the Rantau Prapat District Court, on Tuesday, November 02, 2021, by Arie Ferdian, SH, MH, as presiding judge, Hendrik Tarigan, SH, MH, and Khairu Rizky, SH as member judges, the trial was open. to the public, assisted by Pieter Layasta Barus, Substitute Registrar and attended by Susi Sihombing, SH, the Public Prosecutor and the defendant without being accompanied by his legal advisor.

e. Author's Analysis

From the indictment of the public prosecutor to the decision of the panel of judges, the refusal was very good and detailed, but according to the author, the verdict handed down was very disproportionate considering that the defendant's actions were immoral and unkind, even the verdict that the prosecutor gave in the indictment was not long enough even though it has been regulated by law, every obscene act accompanied by the violence of the decision should be increased in order to provide a deterrent effect for the perpetrators and no longer repeat their actions and reduce cases of obscenity in this rantauprapat city, And from this case the author conducted an interview with Mr. SARBARITA SIMANJUNTAK on duty as PP (substitute clerk) as a substitute for the presiding judge in this interview he responded to cases of sexual abuse with violence that was carried out on the basis of an opportunity where the victim was in a weak physical condition, not infrequently immoral cases were accompanied by violence because of their nature. is forcing him to satisfy his dishonorable act, therefore to anticipate less cases of sexual abuse, it must be implemented from an early age, namely in a family environment where the role of parents is very important in terms of approach, especially for girls. Women are also taught by parents to be able to be assertive in situations that threaten existence that smells of immorality, and dare to speak in things that are not good, the environment is also very influential in development because that is what will form a good personality, all prevention so that this immoral act does not occur can be broken by economic conditions, a lot has happened in this country the basis for committing crimes are people who belong to the lower middle class of society, desperate to do anything in order to enjoy all their desires, the education factor is also very, very influential in terms of mindset, and also the low level of religious applicability of its religion.

IV. Conclusion

- 1. Legal arrangements regarding obscene acts which are legally mature are regulated in Article 285 of the Criminal Code. Anyone with violence or threats of violence forces a woman without any marriage ties or commits rape, the maximum imprisonment is 12 years. Article 286 of the Criminal Code Whoever has sex with a woman who is not his wife and the woman is unconscious or helpless, then sentenced to a maximum imprisonment of 9 years. years, and the age limit is said to be an adult according to the compilation of Islamic law article 98 paragraph 1, namely the age of 21 years, but according to Law No. 1 of 1974 of the Marriage Law, Article 47 paragraph 1, namely the age of 18 years.
- 2. The legal considerations of the panel of judges in deciding in this case with indictments in the form of alternatives, so that the panel of judges by taking into account the legal facts directly chose the second alternative indictment as stipulated in article 289 of the Criminal Code, the sanction obtained by the perpetrator for his actions was the defendant ARIANSYAH LUBIS alias caca was legally proven to have committed the crime of "attacking moral honor" as stated in the second alternative indictment, therefore the defendant was sentenced to prison for 1 (one) year 4 (four) months, and the period of arrest and detention that the defendant had served was deducted entirely from the sentence imposed, and the defendant remains in custody.

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Pasal 285 KUHPidana-kitab-undang-undang-hukum-pidana

Pasal 286-KUHPidana-kitab-undang-undang-hukum-pidana

pasal 289 KUHPidana-kitab-undang-undang-hukum-pidana

pasal 290KUHPidana-kitab-undang-undang-hukum-pidana

Pasal 292 KUHPidana-kitab-undang-undang-hukum-pidana

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