

Human Rights as Fundamental and Universal Rights in Regulating the Fulfillment of the Rights of Women Victims of Sexual Violence

Ni Putu Rai Yuliantini¹, Dewa Gede Sudika Mangku², Ni Putu Ega Parwati³, I Dewa Gede Herman Yudiawan⁴, David Greacy Geovanie⁵

^{1, 2, 3, 4}Faculty of Law and Social Sciences, Ganesha University of Education, Indonesia

⁵Master of Law, Faculty of Law, Palangka Raya University, Indonesia

ABSTRACT: Sexual Violence and Human Rights in Indonesia, is a crucial issue in Indonesia, taking away the human rights and dignity of victims. Stigma and lack of protection exacerbate the situation. This article examines the relationship between sexual violence and human rights in Indonesia, and explores solutions for building a future free from sexual violence. This research uses a sociolegal method (mix method) with statutory, conceptual, factual, sociological and comparative approaches. Primary data was obtained from field research in Bali, and secondary data from various sources. Sexual violence is a serious human rights violation, and states have an obligation to protect victims and enforce the law. Stigma and lack of access to recovery services hinder the fulfillment of victims' rights. The Universal Declaration of Human Rights (UDHR) and other human rights instruments affirm the right to security, freedom and dignity. Sexual violence violates these human rights principles. Collective efforts are needed to build an Indonesia free from sexual violence. These efforts include: Strengthening regulations and law enforcement. Increase public education and awareness. Building a support and recovery system for victims. Combat stigma and build positive narratives about victims. This research contributes to the understanding of the relationship between sexual violence and human rights in Indonesia, and offers solutions to build a better future for victims.

KEYWORDS: Sexual violence, human rights, stigma, recovery, Indonesia.

I. INTRODUCTION

Sexual violence is an issue that has long been discussed among Indonesian society. Sexual violence in Indonesia occurs in various circles. Starting from children, teenagers, to adults. In fact, it doesn't only happen to women, but also to men [1]. Not only various groups, sexual violence can also occur anywhere, namely the workplace, public places, places of study and even in the family environment. Various forms of violence include violating human rights, crimes against human dignity, and a form of discrimination that must be eliminated [2]. Most victims of sexual violence are women who are obliged to receive protection from both the state and society so that victims can continue to live freely and avoid the shadow of violence, torture and treatment that tends to degrade human dignity and status.

The problem of sexual violence is often heard by Indonesian people. However, Indonesian law does not fully provide strict legal consequences for perpetrators and protection for victims [3]. Only a small number of sexual violence cases are brought to court. This is because victims are afraid to report to the authorities due to the bad stigma that society has towards victims of sexual violence. Victims are often given a stigma by society that they may also 'enjoy' the sexual violence that occurs[4]. Protection and attention to the interests of victims of sexual violence, both through the judicial process and through certain social care facilities, is an absolute part that needs to be considered in criminal law policies and social policies, both existing social institutions and state power institutions.

Human rights are basic and absolute rights that every person has because he is human. This right exists considering the vulnerable position of humans in social, cultural, economic and social processes and is intended to provide protection. Every human being has these rights although the extent to which these rights are fulfilled in practice varies greatly from country to country. Human rights aim to guarantee the dignity of every person [5]. Human rights provide moral power to guarantee and protect human dignity based on law, not based on will, circumstances or certain political tendencies. These rights and freedoms have the following characteristics: they cannot be revoked or cancelled, they are universal, they are interrelated and cannot be separated. In simple terms, it can be said that every human being has the right to freedom, security and a decent standard of living[6].

Human Rights as Fundamental and Universal Rights in Regulating the Fulfillment of the Rights of Women Victims of Sexual Violence

II. METHODOLOGY

The writing in this research uses sociolegal research (mix method) [7]. The use of the sociolegal method (mix method) in this research is due to the absence of norms related to regulating the fulfillment of the rights of women who are victims of sexual violence and resulting in problems in society which is researched using empirical legal research methods to answer problems in society, this is because in a certain context [8], pure doctrinal studies, monodisciplinary textual studies cannot fully answer various contextual justice issues faced by society. This research uses a statutory regulation approach, a conceptual approach, a factual approach, a sociological approach and a comparative approach. The data used in writing this dissertation was sourced or obtained from research in the field conducted by means of research conducted on traditional leaders and traditional institutions in Bali Province as well as secondary data related to the characteristics of the needs for fulfilling the rights of victims of sexual violence against women in the living system. customary law communities in Bali. The data collection techniques used in this research are document study techniques and field study techniques. The sample in this research was determined based on non-probability sampling techniques, using purposive sampling. Furthermore, the data in this research was processed and analyzed using legal hermeneutics, which is an analytical tool that places text and context. Legal hermeutics is also an interpretation method for analyzing legal texts by understanding and expressing the meaning of legal texts [9].

IV. RESEARCH AND DISCUSSION

Deklarasi Universal mengenai hak asasi manusia (DUHAM) atau *Universal Declaration of Human Right* pada tahun 1948 mengandung prinsip-prinsip dasar kemanusiaan, yakni menjunjung tinggi harkat dan martabat kemanusiaan. Konsep HAM mencakup tiga elemen utama bagi eksistensi manusia baik sebagai makhluk individu dan makhluk sosial yaitu integritas manusia (*human integrity*), kebebasan (*freedom*) dan kesamaan (*equality*) [10]. These three elements are conceptualized into definitions and understanding of what human rights are. Understanding this definition becomes clear when recognition of these rights is given and seen as a process of human humanization by other parties in a vertical (individual and state) and horizontal (between individuals) context, both de facto and de jure. Thus, human rights values are fundamental and universal with the recognition, protection and promotion of human integrity, freedom and equality in the main international human rights instruments, both at the international, regional and national levels [11]. Even though their values are universal, human rights can be divided into several normative academic groupings, namely, first, personal rights or "personal rights". Second, economic human rights or the right to own something (property rights). Third, the right to receive equal and equal treatment in law and government or the "right of legal equality".

Fourth, political human rights or "political rights". Fifth, social and cultural human rights or "social and cultural rights", such as obtaining and choosing education, developing a preferred culture [12]. Sixth, litigation rights and their protection or "procedural rights". Understanding and comprehending human rights from a substantive perspective is complicated and complex based on developments, existing realities and the complexity of other determining factors [13]. Human rights concepts and values change over time, both through evolutionary and revolutionary processes from normative forces into processes of social and political change in the entire fabric of human life[14].

Human rights are seen as important norms. Although not entirely absolute and without exception, human rights have a strong enough position as a normative consideration to be applied in conflict with conflicting national norms, and to justify international action taken for human rights [15]. The rights outlined in the declaration are not arranged according to priority; their relative weights are not mentioned. It is not stated that some of them are absolute. Thus the human rights described by the declaration are what philosophers call *prima facie* rights. These rights imply obligations for both individuals and governments. The existence of this obligation, like the rights related to it, is deemed not to depend on its acceptance, recognition or application [16].

Governments and people everywhere are obliged not to violate a person's rights, although that person's government may also have the primary responsibility for taking positive steps to protect and enforce that person's rights. Sixth, these rights establish minimum standards for proper societal and state practice[17]. Not all problems born of cruelty or selfishness and stupidity are human rights problems. For example, a government that fails to provide national parks for its people may indeed be criticized as incompetent or not paying enough attention to recreational opportunities, but this will never be a human rights issue.

The state and each individual have their own role in implementing human rights. The role of individuals is related to the principle of balance as stated above, namely that human rights do not only contain authority or freedom but also individual responsibilities or obligations, and every individual as a human rights subject has an obligation or responsibility to respect the human rights of others, just as other people are required to do so. to respect human rights [18]. Violation of one person's human rights by another individual is an action for which legal responsibility can be held. However, the role of the state is very central and important in the implementation of human rights. Referring to various human rights instruments, it is the state that carries the obligation to guarantee the fulfillment of human rights. The state has an obligation to ensure that human rights are respected, protected, promoted and fulfilled[19]. Respect, protect, promote and fulfill indicate the level of action or action that must be taken by the state in relation to the implementation of human rights.

Human Rights as Fundamental and Universal Rights in Regulating the Fulfillment of the Rights of Women Victims of Sexual Violence

The commitment of the Republic of Indonesia to respect, protect, fulfill, enforce and promote human rights is clearly stated in the 1945 Constitution of the Republic of Indonesia which regulates the substance of human rights in a separate chapter, namely CHAPTER XA from Article 28A to Article 28J. Article 281 paragraph (4) states that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government [20]. Furthermore, article 28J paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that everyone is obliged to respect the human rights of others in orderly social, national and state life. The state's commitment to human rights is also stated in statutory regulations such as Law Number 17 of 2007 concerning the National Long Term Development Plan (RPJPN) for 2005-2025 and Law Number 39 of 1999 concerning Human Rights which emphasizes the government's mandate to implement obligations and responsibilities of the state in the framework of respecting, protecting, fulfilling, upholding and promoting human rights [21].

In order to carry out this mandate, the Indonesian Government then issued a number of legislative regulations, one of which was the preparation of the National Human Rights Action Plan (RANHAM) which is contained in Indonesian Presidential Regulation Number 53 of 2021 concerning the National Human Rights Action Plan for 2021-2025 which serve as a guideline for preparing agendas and programs to respect, protect, fulfill, enforce and promote human rights in Indonesia in a planned and sustainable manner. The implementation of RANHAM has now gone through 4 (four) generations, namely the first generation (1999-2003 period), the second generation (2004-2009 period), the third generation (2011-2014 period), and the fourth generation (2011-2014 period). In general, the development of the achievements of the Human Rights Action shows progress, although with a number of notes that need to be taken into account to further improve the performance of ministries, institutions and provincial and district/city governments in the context of respecting, protecting, fulfilling, upholding and promoting human rights [22].

RANHAM contains strategic targets that aim at respecting, protecting, fulfilling, upholding and promoting human rights for 4 (four) target groups [23], namely:

1. female;
2. Two children;
3. people with disabilities;
4. Indigenous Community Groups.

Women's groups are the focus of the RANHAM group's targets because the protection and fulfillment of women's rights in various fields of development has not been maximized. Children are one of RANHAM's target groups based on the premise that there are still children in special situations who do not receive basic rights and public services, especially in the fields of population administration, education and health [24]. Apart from that, children are still very vulnerable to acts of violence, exploitation and discrimination, including in the field of employment. Persons with disabilities are the target group for RANHAM, because even though there is Law Number 8 of 2016 concerning Persons with Disabilities, the implementation of respecting, protecting, fulfilling, enforcing and promoting the rights of this group is still not effective and optimal [25]. Indigenous Community Groups were targeted by the RANHAM group based on the premise that currently there is no adequate legal protection framework for Indigenous Community Groups and violations of Indigenous Community Groups' land rights still occur frequently. In detail, the guaranteed protection of Indigenous Peoples Groups in RANHAM is based on challenges and directed at strategic targets.

V. CONCLUSIONS

The basic principle of the Universal Declaration of Human Rights (UDHR) is to uphold human dignity. The concept of human rights includes human integrity, freedom and equality. Human rights values are fundamental and universal. Commitment of the Republic of Indonesia to Human Rights: Regulated in the 1945 Constitution, Law no. 39 of 1999 concerning Human Rights, and other laws and regulations. Implemented through the preparation of the National Human Rights Action Plan (RANHAM). RANHAM contains strategic targets for 4 target groups: women, children, people with disabilities, and Indigenous Community Groups. The UDHR is an important document that outlines universal basic human rights. Implementation of human rights requires commitment and active role from states and individuals.

REFERENCES

- 1) G. M. W. Atmaja, N. M. Aryani, and Dkk, *Pluralisme Konstitusional dalam Pengakuan Kesatuan Masyarakat Hukum Adat (Studi Intrepretasi atas Putusan Mahkamah Agung dalam Perkara Permohonan Keberatan Hak Uji Materiil terhadap Peraturan Daerah Propinsi Bali Nomor 16 tahun 2009)*. Yogyakarta: Andi, 2017.
- 2) D. G. S. Mangku, N. P. R. Yuliantini, and I. G. E. Suandita, "Implementation of e-court in settlement of civil cases in Singaraja district court.," *AIP Conf. Proc.*, 2022, doi: <https://doi.org/https://doi.org/10.1063/5.0104105>.
- 3) H. Nurtjahjo and F. Faud, *Legal Standing Kesatuan Masyarakat Hukum Adat Dalam Berperkara di Mahkamah Konstitusi*. Jakarta: Salemba Humanika, 2010.
- 4) N. P. R. Yuliantini, D. G. S. Mangku, and N. M. C. Darayani, "he cyberporn and its challenges for information and electronic transactions law," *AIP Conf. Proc.*, doi: <https://doi.org/https://doi.org/10.1063/5.0104238>.

Human Rights as Fundamental and Universal Rights in Regulating the Fulfillment of the Rights of Women Victims of Sexual Violence

- 5) N. Tinotak, "Perlindungan Hukum Atas Hak Asasi Masyarakat Adat Dalam Pengelolaan Sumber Daya Hutan Di Provinsi Maluku," *J. Sasi*, vol. 16, no. 4, 2010.
- 6) N. P. R. Yuliantini, D. G. S. Mangku, and N. M. C. Darayani, "Optimization of the Buleleng Cyber Patrol Task Force in Combating Cyber Pornography in Singaraja City," *AIP Conf. Proc.*, doi: <https://doi.org/https://doi.org/10.1063/5.0104237>.
- 7) L. I. Nurtjahyo, "Penelitian Hukum Berperspektif Sosiolegal Pada Ranah Digital: Satu Tawaran Metodologis," *Indones. J. Socio-Legal Stud.*, vol. 1, no. 1, 2021.
- 8) J. Efendi and J. Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris*. Jakarta: Prenada Media, 2018.
- 9) J. Hamidi, *Hermeneutika Hukum Sejarah, Filsafat dan Metode Tafsir*. Malang: Universitas Brawijaya Press, 2011.
- 10) A. R. Eide, Asbjorn, Catarina Krause, *Economic, Social and Cultural Rights, A Textbook*. Dordrecht: Martinus Nijhoff, 1995.
- 11) N. P. R. Yuliantini, Hartana, D. G. S. Mangku, I. G. A. A. Hadi, and K. S. Arta, "Legal Protection for Women and Children as Victims of Human Trafficking in Indonesia," *J. Leg. Ethical Regul. Issues*, vol. 24, no. 1, 2021.
- 12) S. Bahar, *Kebijakan Negara Dalam Rangka Pengakuan, Penghormatan, dan Perlindungan Masyarakat (Hukum) Adat di Indonesia*. 2008.
- 13) Taihito and B. Perwira, *Penaatan Indonesia pada Standar-Standard HAM Internasional Dalam Kurun Waktu 1991-2002*. Jakarta: Fakultas Ilmu Sosial dan Politik Departemen Ilmu Hubungan Internasional, Pasca Sarjana Universitas Indonesia, 2003.
- 14) A. A. I. A. A. Dewi, *Penyusunan Perda Yang Partisipatif: Peran Desa Pakraman Dalam Pembentukan Peraturan Daerah Jawa Timur*: Zifatama Jawara, 2019.
- 15) D. G. S. Mangku, N. P. R. Yuliantini, R. Ruslan, S. Menteiro, and D. Surat, "The Position of Indigenous People in the Culture and Tourism Developments: Comparing Indonesia and East Timor Tourism Law and Policies," *J. Indones. Leg. Stud.*, vol. 7, no. 1, 2022.
- 16) N. P. R. Yuliantini, D. G. S. Mangku, and I. W. B. Yasa, "The Utilization of Digital Technology for Rehabilitation of Drug Users by SADAR Application: A Creative Breakthrough for the Victims of Drugs Abuse in Buleleng Regency," *AIP Conf. Proc.*, 2022, doi: <https://doi.org/10.1063/5.0104236>.
- 17) H. Abdurrahman, *Perkembangan Pemikiran Tentang Pembinaan Hukum Nasional di Indonesia*. Jakarta: Akademika Pressindo, 2011.
- 18) I. W. B. Yasa, N. P. R. Yuliantini, and D. G. S. Mangku, "E-Relawan: Increasing Volunteer Interest and Performance through the Use of E-Volunteer Application Technology in Humanitarian Missions in Disaster Conditions in Bali Province," *AIP Conf. Proc.*, vol. 2573, no. 1, 2022, doi: <https://doi.org/10.1063/5.0104114>.
- 19) D. G. S. Mangku, N. P. R. Yuliantini, Dewi, and Arta, "Disclosure of Crime Cases through CCTV: How Does Technology Help Police Performance?," *AIP Conf. Proc.*, 2022, doi: <https://doi.org/https://doi.org/10.1063/5.0104107>.
- 20) A. I. Chandra, *Dekonstruksi Pengertian Kesatuan Masyarakat Hukum Adat dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Malang, 2008.
- 21) Sujatmoko and Andrey, *Hukum HAM Dan Hukum Humaniter*. Jakarta: Raja Grafindo Perkasa, 2015.
- 22) K. F. Dantes, D. G. S. Mangku, and N. P. R. Yuliantini, "The Future Impact of Electronic Signature (E-Signature) in the E-GMS of Limited Liability Companies," *AIP Conf. Proc.*, vol. 2573, no. 1, 2022, doi: <https://doi.org/10.1063/5.0104125>.
- 23) Menski and Werner, *Perbandingan Hukum Dalam Konteks Global Sistem Eropa, Asia Dan Afrika: Comparative Law In A Global Context*. Bandung: Nusamedia, 2015.
- 24) E. Yuniarti, D. M. F. Wahyuni, N. Fadillah, and D. G. S. Mangku, "Characteristics of Plants in Public Areas of Green Open Spaces in Padang City, Indonesia," *Casp. J. Environ. Sci.*, vol. 21, no. 3, p. 517, 2023, doi: [10.22124/CJES.2023.6927](https://doi.org/10.22124/CJES.2023.6927).
- 25) D. G. S. Mangku, R. Subekti, and N. P. R. Yuliantini, "Legal Protection for Consumers Recipient of COVID-19 Vaccine in Indonesia," *Int. J. Health Sci. (Qassim)*, vol. 6, no. 2, p. 956, 2022, doi: [10.53730/ijhs.v6n2.8973](https://doi.org/10.53730/ijhs.v6n2.8973).
- 26) Yuliantini, N. P. R. (2021). Legal Protection of Women And Children From Violence In The Perspective Of Regional Regulation of Buleleng Regency Number 5 Year 2019. *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9(1), 89-96.
- 27) Malik, F., Abduladajid, S., Mangku, D. G. S., Yuliantini, N. P. R., Wirawan, I. G. M. A. S., & Mahendra, P. R. A. (2021). Legal Protection for People with Disabilities in the Perspective of Human Rights in Indonesia. *International Journal of Criminology and Sociology*, 10, 538-547.
- 28) Yuliantini, N. P. R., & Mangku, D. G. S. (2019). Tindakan Genosida terhadap Etnis Rohingya dalam Perspektif Hukum Pidana Internasional. *Majalah Ilmiah Cakrawala Hukum*, 21(1), 41-49.
- 29) Dewi, I. A. P. M., Yuliantini, N. P. R., & Mangku, D. G. S. (2020). Penegakan Hukum Terhadap Anak Dalam Pelanggaran Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang Lain Di Kota Singaraja. *Ganesha Law Review*, 2(2), 121-131.
- 30) Febriana, N. E., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Upaya Perlawanan (Verzet) Terhadap Putusan Verzet

Human Rights as Fundamental and Universal Rights in Regulating the Fulfillment of the Rights of Women Victims of Sexual Violence

- Dalam Perkara No. 604/PDT. G/2016/PN. SGR Di Pengadilan Negeri Singaraja Kelas 1B. *Ganesha Law Review*, 2(2), 144-154.
- 31) Dana, G. A. W., Mangku, D. G. S., & Sudiarmaka, K. (2020). Implementasi UU Nomor 28 Tahun 2014 Tentang Hak Cipta Terkait Peredaran CD Musik Bajakan Di Wilayah Kabupaten Buleleng. *Ganesha Law Review*, 2(2), 109-120.
 - 32) Hartana, H. (2019). Initial public offering (ipo) of capital market and capital market companies in Indonesia. *Ganesha Law Review*, 1(1), 41-54.
 - 33) Sastrawan, G. (2021). Analisis Yuridis Pelanggaran Hak Cipta Pada Perbuatan Memfotokopi Buku Ilmu Pengetahuan. *Ganesha Law Review*, 3(2), 111-124.
 - 34) Nurhayati, B. R. (2019). Harmonisasi Norma Hukum Bagi Perlindungan Hak Keperdataan Anak Luar Kawin Dalam Sistem Hukum Indonesia. *Ganesha Law Review*, 1(1), 55-67.
 - 35) Jotyka, G., & Suputra, I. G. K. R. (2021). Prosedur Pendaftaran Dan Pengalihan Merek Serta Upaya Perlindungan Hukum Terhadap Merek Terkenal Menurut Undang-Undang Nomor 15 Tahun 2001. *Ganesha Law Review*, 3(2), 125-139.
 - 36) Suriati, N. K., Yuliantini, N. P. R., & Mangku, D. G. S. (2022). Perlindungan Hak-Hak Anak Dalam Aspek Hukum Internasional. *Ganesha Law Review*, 4(2), 63-72.
 - 37) Itasari, E. R. (2019). Fulfillment Of Education Rights In The Border Areas Of Indonesia And Malaysia. *Ganesha Law Review*, 1(1), 1-13.
 - 38) Marta, P., Yuliantini, N. P. R., & Mangku, D. G. S. (2022). Pelanggaran hak asasi manusia dan perlindungan oleh UNICEF pada penggunaan tentara anak dalam konflik bersenjata Kongo. *Ganesha Law Review*, 4(2), 84-92.
 - 39) Gombo, P. D. (2021). Minol (Alcoholic Beverage) Bill In The Time Of The Covid-19 Pandemic In Perspective Law And Ham. *Ganesha Law Review*, 3(1), 68-78.
 - 40) Putra, A. S., Yuliantini, N. P. R., SH, M., Mangku, D. G. S., & SH, L. M. (2019). Sistem Pembinaan Terhadap Narapidana Narkotika Di Lembaga Pemasyarakatan Kelas IIB Singaraja. *Jurnal Komunitas Yustisia*, 2(1).
 - 41) Putra, I. P. S. W., Yuliantini, N. P. R., & Mangku, D. G. S. (2020). Kebijakan Hukum Tentang Pengaturan Santet Dalam Hukum Pidana Indonesia. *Jurnal Komunitas Yustisia*, 3(1), 69-78.
 - 42) Sanjaya, P. A. H., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Perlindungan Hukum Terhadap Gedung Perwakilan Diplomatik Dalam Perspektif Konvensi Wina 1961 (Studi Kasus Ledakan Bom Pada Kedutaan Besar Republik Indonesia (KBRI) Yang Dilakukan Oleh Arab Saudi Di Yaman). *Jurnal Komunitas Yustisia*, 2(1), 22-33.
 - 43) Sant, G. A. N., Yuliantini, N. P. R., & Mangku, D. G. S. (2020). Perlindungan Hukum Terhadap Korban Tindak Pidana Penyalahgunaan Narkotika di Kabupaten Buleleng. *Jurnal Komunitas Yustisia*, 2(3), 71-80.
 - 44) Yuliantini, N. P. R. (2016). Eksistensi Pidana Pengganti Denda Untuk Korporasi Dalam Pembaharuan Hukum Pidana Indonesia. *Jurnal IKA*, 14(1).
 - 45) Yuliantini, N. P. R. (2019). Kenakalan Anak dalam Fenomena Balapan Liar di Kota Singaraja Dalam Kajian Kriminologi. *Jurnal Advokasi*, 9(1), 31-43.
 - 46) Yuliantini, N. P. R. (2019). Legal Protection For Victims Of Criminal Violations (Case Study Of Violence Against Children In Buleleng District). *Veteran Law Review*, 2(2), 30-41.