MJP Journal of Law and Justice (MJPJLJ)
Vol.3, No.1 (2025): 1 – 5
https://jurnalilmiah.co.id/index.php/MJPJLJ



Legal Review of the Application of Article 281 of the Criminal Code in Cases of Sexual Violence against Women (Study of Decision Number 13/Pid.B/2021/PN Tmt)

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Article Info

Keywords:
Sexual violence; women; Article 281 of the Criminal Code; judge's considerations; Tilamuta District Court Decision

ABSTRACT

This article aims to analyze the application of Article 281 paragraph (1) of the Criminal Code to the crime of sexual violence against women in Decision Number 13/Pid.B/2021/PN Tmt and examine the basis for the Tilamuta District Court judge's considerations in sentencing. The research uses a normative-empirical legal method with a statutory approach, a case approach, and a conceptual approach. Primary data was obtained from a review of decisions and interviews at the Tilamuta District Court, while secondary data was obtained from the Criminal Code, the Criminal Procedure Code, the Law on Sexual Violence Crimes, books, journals, and other relevant legal materials. The results of the study indicate that the application of Article 281 paragraph (1) of the Criminal Code in the a quo case is formally in accordance with the single indictment of the public prosecutor and the legal facts revealed at trial. The elements of whoever and the elements of intentionally and openly violating morality are deemed fulfilled based on witness statements, the defendant's statement, evidence, and the fact that the act occurred in an open place. However, the one-month, fifteen-day prison sentence demonstrates a gap between the evidence of guilt, the impact of the victim's trauma, the victim's objections to forgiving the defendant, and the orientation of the sentencing, which should provide stronger protection for female victims. The judge's considerations encompass both legal and sociological considerations, but still need to be strengthened with the perspective of victim protection and substantive justice. This article emphasizes the importance of the public prosecutor's careful preparation of the indictment and the need for judges to consider the social, psychological, and gender relations impacts in cases of sexual violence against women.

Article History

Received : 15/04/2025
Revised : 10/05/2025
Accepted : 21/06/2025

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1. Introduction

Sexual violence against women is a legal and social issue that continues to cause public concern. This issue not only concerns violations of morality, but also concerns women's dignity, sense of security, physical and psychological health, and their often unequal position in social relations. The National Commission on Violence Against Women notes that violence against women has shown an increasing trend year after year, with sexual violence becoming one of the most serious forms of violence because it directly affects the victim's body, sexuality, and honor [1].

As it develops, sexual violence can no longer be understood narrowly as rape. Sexual violence can take the form of verbal harassment, unwanted physical contact, sexual exploitation, sexual coercion, threats, and various forms of attacks on a person's body and sexuality. The National Commission on Violence Against Women's annual reports also show that gender-based violence has increased significantly, particularly as social and digital spaces become more open [2]. This demonstrates that legal protection for female victims of sexual violence requires responsive legal instruments and law enforcement officers who are sensitive to the victims' experiences.

Conceptually, sexual violence is a form of gender-based violence because its victims are often in vulnerable positions due to power relations, social relations, or cultural constructs that position women as the weaker party. Hudaya explains that sexual violence not only causes physical injuries, but also psychological trauma, fear, shame, and social barriers for victims [3]. Therefore, handling sexual violence cases cannot be directed solely at formal evidence, but also needs to consider the real impact experienced by the victim.

Prior to the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, Indonesian criminal law still relied heavily on the Criminal Code. In the Criminal Code, acts related to morality are spread across several articles, one of which is Article 281, which regulates acts that intentionally and openly violate morality.[4] This norm is often used in cases that are factually related to inappropriate sexual acts, but its formulation is still general and does not fully reflect the complexity of sexual violence against women.

The enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence brings important changes because it broadens the definition of sexual violence, recognizes victims' rights to treatment, protection, and recovery, and strengthens the orientation of criminal justice that favors victims.[5] However, cases that occurred before the enactment of the TPKS Law are still analyzed based on the law in force at the time of the act. This is where a legal issue arises: how to assess cases of sexual violence against women processed under the decency articles of the Criminal Code, when the victims have substantially experienced sexual violence.

One of the relevant cases to be analyzed is Decision Number 13/Pid.B/2021/PN Tmt. In this case, the defendant Riyanto Idrus alias Iko was accused of committing indecent acts against a female victim in 2019 in the Boalemo Regency area. These acts included unwanted touching of parts of the victim's body and were carried out while traveling on a motorbike. The public prosecutor charged the defendant with a single charge of Article 281 paragraph (1) of the Criminal Code and demanded a prison sentence of two months. The panel of judges then sentenced him to one month and fifteen days in prison [6].

The decision is important because it shows the tension between proving the elements of the article, the judge's considerations, and the sense of justice for the victim. On the one hand, the panel of judges stated that the elements of Article 281 paragraph (1) of the Criminal Code were fulfilled. On the other hand, the sentence imposed was relatively light when compared to the impact of the victim's trauma, the victim's objections, and the interests of protecting women from sexual violence. Putri Anggriani Muksin's thesis noted that the victim did not forgive the defendant, the defendant's actions disturbed the community, and the victim felt traumatized and afraid [7].

Previous studies have extensively discussed the crime of sexual violence, the protection of children and women, and the relevance of the TPKS Law in law enforcement. Suitela and Alputila, for example, emphasize the importance of fulfilling the right to restitution for child victims of sexual violence [8]. Yusyanti highlights legal protection for child victims of sexual violence [9]. However, there is still room for study on concrete decisions in first-instance courts, especially how the decency articles of the Criminal Code are applied to cases that are substantially sexual violence against women.

The novelty of this article lies in the legal analysis of Decision Number 13/Pid.B/2021/PN Tmt by placing the application of Article 281 paragraph (1) of the Criminal Code and the judge's considerations from the perspective of protecting female victims of sexual violence. This article not only examines whether or not the elements of the article have been fulfilled, but also assesses whether the judge's considerations have given adequate weight to the impact on the victim, the victim's objections, and the function of punishment as a form of community protection.

Based on this background, the problem formulation in this article is:

1. How is the application of the article regarding the crime of sexual violence against women in Decision Number 13/Pid.B/2021/PN Tmt?
2. What is the consideration of the Tilamuta District Court judge in Decision Number 13/Pid.B/2021/PN Tmt?

In line with the problem formulation, this study aims to analyze the application of the article and the judge's considerations in this case. Theoretically, this article is expected to enrich the study of criminal law and victim protection. Practically, this article is expected to provide input for law enforcement officials to be more careful and victim-centered in handling cases of sexual violence against women.

2. Research Methods

This research uses a normative-empirical legal research type. Normative research is used to examine criminal law norms that form the basis for punishment, especially Article 281 paragraph (1) of the Criminal Code, the provisions of the Criminal Procedure Code, and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Empirical research is used to read how these norms are applied in judicial practice through Decision Number 13/Pid.B/2021/PN Tmt and the results of interviews at the Tilamuta District Court [7].

The approaches used include a statutory approach, a case approach, and a conceptual approach. The statutory approach is used to examine the provisions of the Criminal Code, the

Criminal Procedure Code, and the TPKS Law. The case approach is used to analyze the construction of the indictment, trial facts, proof of the elements of the article, the public prosecutor's demands, and the verdict in Decision Number 13/Pid.B/2021/PN Tmt. The conceptual approach is used to understand the concepts of criminal acts, sexual violence, morality, punishment, and the judge's considerations.

The data sources in this study consist of primary and secondary data. Primary data comes from Decision Number 13/Pid.B/2021/PN Tmt and information from interviews conducted during the thesis research with the judge handling the case on August 6, 2024. Secondary data comes from primary legal materials in the form of the Criminal Code, the Criminal Procedure Code, and the TPKS Law; secondary legal materials in the form of books, journals, and research results; and tertiary legal materials in the form of dictionaries or other relevant supporting sources.

Data collection techniques were conducted through document studies, observations, and interviews. Document studies were conducted on court decisions, laws and regulations, books, journals, and other written sources. Observations and interviews were used to obtain an overview of the judge's reasoning in issuing a decision. The collected data were analyzed qualitatively by connecting legal norms, case facts, the judge's considerations, and criminal theory, then drawing descriptive-analytical conclusions to answer the problem formulation.

3. Results and Discussion

The discussion in this section is directed at answering two research problem formulations. The first analysis focuses on the application of Article 281 paragraph (1) of the Criminal Code in Decision Number 13/Pid.B/2021/PN Tmt, especially regarding the suitability of the charges, legal facts, elements of the article, and evidence. The second analysis focuses on the considerations of the Tilamuta District Court judge, both legal and sociological considerations, including aggravating and mitigating circumstances for the defendant. The assessment is carried out by connecting the facts of the decision, interview results, criminal law norms, the concept of sexual violence, and the orientation of protecting female victims.

3.1. Application of Articles to Criminal Acts of Sexual Violence Against Women in Decision Number 13/Pid.B/2021/PN Tmt

Decision Number 13/Pid.B/2021/PN Tmt began with the actions of the defendant Riyanto Idrus alias Iko against the female victim witness on Monday, October 28, 2019. Based on the description of the facts in the thesis, the defendant and the victim went by motorbike to someone's house in Mutiara Village, Paguyaman District, Boalemo Regency, then on the way home the defendant committed an act that touched the victim's body. The act occurred in several places on the way, including on the road and while on the motorbike [7].

The public prosecutor charged the defendant with a single charge under Article 281 paragraph (1) of the Criminal Code. This article regulates acts that intentionally and openly violate morality. The single charge was chosen because the public prosecutor assessed that the defendant's actions were qualified under one criminal provision, namely a criminal act against morality. From a procedural law aspect, the charge must be drafted carefully, clearly, and completely so that the defendant knows the act being accused of and the judge has a basis for examining the case [10].

The use of a single charge in this case is understandable because the alleged acts are directed at a single criminal construct, namely open violation of morality. However, substantively, this case demonstrates the limitations of Article 281 of the Criminal Code in capturing the victim's experience as a victim of sexual violence. Article 281 of the Criminal Code places greater emphasis on violations of morality in open spaces, while the later TPKS Law places greater emphasis on acts of demeaning, attacking, or disturbing the victim's body, sexual desires, and reproductive functions. [5]

The first element of Article 281 paragraph (1) of the Criminal Code is whoever. This element refers to the legal subject who can be held criminally responsible. In this case, the defendant Riyanto Idrus alias Iko is an individual whose identity is clear, present at the trial, and able to answer the panel of judges' questions. There was no mistake regarding the defendant's identity. Thus, the element of whoever is deemed to be fulfilled [6].

The second element is intentionally and openly violating morality. The intentional element relates to the mental state of the perpetrator who knows and desires his actions. In criminal law doctrine, intention can take the form of intention as intent, intention with certainty, or intention with possibility [11]. In this case, the judge assessed the existence of intention based on the defendant's actions in touching the victim's body and carried out during a series of trips in a place that can be seen or in an open space.

The open element in Article 281 of the Criminal Code relates to the place or circumstances that allow the act to be known by others or to be carried out in a non-private space. In this decision, the defendant's actions occurred on the road, on a sidewalk, and on a motorcycle while traveling. Therefore, the panel of judges considered that the act fulfilled the open element. This assessment is in line with the construction of Article 281 of the Criminal Code, which requires a violation of morality in public or openly [4].

The trial facts also showed that the victim-witness objected, did not forgive the defendant, and was traumatized. The victim's statement, the witness's statement, and the defendant's statement were considered by the panel of judges as evidence. Evidence in the form of a motorcycle, vehicle registration, and ignition key were also recorded in the case because they were related to the context in which the act occurred. With the conformity of the evidence, the panel of judges concluded that the defendant was legally and convincingly proven to have committed the crime as charged [6].

From the perspective of the application of the article, the author assesses that the formal application of Article 281 paragraph (1) of the Criminal Code is appropriate because it is in accordance with the single charge and the revealed legal facts. However, the use of Article 281 of the Criminal Code shows the limitations of the old criminal law in giving a legal name to sexual violence. The actions against the female victim's body in this case are substantially sexual violence, but are formally positioned as a violation of morality. As a result, the orientation of victim protection becomes less prominent in the construction of the punishment.

From the perspective of criminal theory, punishment not only functions as retribution, but also as prevention, protection

of society, restoration of balance, and affirmation of norms [12]. If punishment in cases of sexual violence is only understood as a response to violations of morality, then the impact on the victim risks not receiving adequate attention. Therefore, the application of the article in cases such as this should not stop at proving formal elements, but also requires reading the defendant's actions in relation to the victim's right to a sense of security, honor, and recovery.

Thus, the application of Article 281 paragraph (1) of the Criminal Code in Decision Number 13/Pid.B/2021/PN Tmt can be declared legally-formally appropriate, but still leaves issues from a substantive justice perspective. This decision demonstrates the importance of criminal law reform and the need for law enforcement officials to use the victim's perspective in handling cases of sexual violence against women.

3.2. Considerations of the Tilamuta District Court Judge in Decision Number 13/Pid.B/2021/PN Tmt

The judge's considerations are a crucial part of a criminal decision because they serve as the rational basis connecting legal facts, evidence, criminal norms, and the sentence imposed. In Decision Number 13/Pid.B/2021/PN Tmt, the judge interviewed for the thesis research explained that the decision was based on the indictment, the public prosecutor's demands, and the legal facts revealed at trial [7].

The first consideration is the legal consideration. The judge considered that the defendant was charged with a single charge of Article 281 paragraph (1) of the Criminal Code. Because the charge was in a single form, the panel of judges immediately proved the elements of the article. The element of whoever is proven through the identity of the defendant, while the element of intentionally and openly violating morality is proven through a series of facts of the act, the victim's statement, witness statements, and the conditions where the act occurred [6].

Juridical considerations also include the assessment that the panel of judges found no grounds for expungement, either justification or excusal. Because the defendant was deemed capable of being held responsible, the defendant must be found guilty and sentenced. In criminal law doctrine, criminal responsibility requires an unlawful act, fault, the capacity to be responsible, and the absence of grounds for expungement.[13] The judges' considerations in this case follow this basic framework.

The second consideration is sociological considerations. In imposing a sentence, the judge considers aggravating and mitigating circumstances. Aggravating circumstances include the defendant being evasive, the victim not forgiving the defendant, the victim objecting to the defendant's actions, and the defendant's actions disturbing the community. A mitigating circumstance is that the defendant has never been convicted [6]. These considerations indicate that the judge not only looks at whether the elements of the article are fulfilled, but also pays attention to the defendant's attitude, the impact on the victim, and the social impact of the act.

However, the sentence imposed, namely imprisonment for one month and fifteen days, needs to be critically examined. The public prosecutor previously demanded a prison sentence of two months, while the threat of Article 281 paragraph (1) of the Criminal Code allows for a heavier sentence. In the context of sexual violence cases, too light a sentence can give rise to the perception that the impact experienced by the victim is not fully appreciated by the justice system. In fact, the victim in this case expressed objections, did not forgive the defendant, and experienced trauma and fear [7].

Judges' considerations should place greater weight on the impact on victims. Sexual violence against women not only violates moral norms but also undermines the victim's sense of security and dignity. Zahira, Nurwati, and Krisnani explain that victims of sexual violence can experience long-lasting psychological, social, and relational impacts [14]. Therefore, the measure of justice in sexual violence cases should not be solely measured by the length of the sentence, but also by whether the verdict acknowledges the victim's experience and prevents recurrence.

From the perspective of the TPKS Law, victim protection is the focus. This law provides victims with the right to treatment, protection, and recovery [5]. Although the TPKS Law was not yet in effect at the time the act occurred and the verdict was rendered, its principles can be used as a guide for reforming perspectives on sexual violence cases. Future court decisions need to strengthen considerations of victim trauma, power relations, psychological impact, and the need for recovery, rather than simply proving formal morality.

From a criminal justice perspective, the punishment imposed must also have a deterrent effect, protect society, and emphasize that acts against a woman's body without consent are serious violations. Hamzah stated that criminal punishment has dimensions of retribution, prevention, and protection of legal interests [15]. Therefore, the judge's considerations need to maintain a balance between the defendant's mitigating circumstances and the interests of the victim and society.

This article assesses that the judge's legal considerations in Decision Number 13/Pid.B/2021/PN Tmt have fulfilled the evidentiary framework for the elements of Article 281 paragraph (1) of the Criminal Code. However, the sociological considerations can still be strengthened, especially in emphasizing the impact of the victim's trauma, the victim's objections, and the context of sexual violence against women. A light sentence has the potential to weaken the message of legal protection for victims and can create the impression that sexual violence is minor only because it is constructed as a violation of morality.

Thus, the judge's reasoning in this case demonstrates two things. First, formally, the judge has proven the elements of the article and considered both aggravating and mitigating circumstances. Second, substantively, the decision still requires criticism because it does not fully reflect victim-oriented justice. Going forward, the judge needs to be more courageous in constructing considerations that connect the trial facts with the protection of women, the deterrent effect on perpetrators, and the rehabilitation of victims.

4. Conclusion

The application of Article 281 paragraph (1) of the Criminal Code in Decision Number 13/Pid.B/2021/PN Tmt is legally and formally in accordance with the single indictment of the public prosecutor and the legal facts revealed in the trial. The element of whoever is fulfilled because the defendant is a legal subject whose identity is clear and can be held criminally responsible. The element of intentionally and openly violating morality is also deemed fulfilled based on the series of actions of the defendant against the victim's body, the place where the

act occurred, and the correspondence between witness statements, the defendant's statement, and evidence. However, substantively, the use of Article 281 of the Criminal Code shows the limitations of the old criminal law because cases that clearly constitute sexual violence against women are only constructed as violations of morality.

The Tilamuta District Court judge's considerations in the decision were based on legal and sociological considerations. Legal considerations include proving the elements of Article 281 paragraph (1) of the Criminal Code, evaluating the evidence, and finding no grounds for eliminating the sentence. Sociological considerations include aggravating circumstances, namely the defendant's indecipherable nature, the victim's failure to forgive the defendant, the victim's objections, and the defendant's actions disturbing the community, as well as mitigating circumstances such as the defendant's prior conviction. However, the one-month and fifteen-day prison sentence still needs to be criticized because it is relatively light compared to the impact of the victim's trauma and the function of punishment in protecting women from sexual violence. Therefore, decisions in sexual violence cases need to further strengthen the victim's perspective, substantive justice, and a recovery orientation.

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