

## Prevention of Secondary Victimization for Victims of Sexual Violence in Court Proceeding

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**Abstract.** The number of sexual violence cases against women remains a concern faced by Indonesian society. Ideally, when a sexual violence occurs, the victim shall report the crime. However, while undergoing the process to demand justice, it is not uncommon for victims of sexual violence to experience the secondary victimization wherein the victim is blamed for the crime instead and receives negative stigma from the law enforcement officials. This study focuses on the causal factors for the occurrence of secondary victimization for victims of sexual violence in the court proceeding and strategies to prevent such phenomenon. This study is a combined empirical and doctrinal legal research focusing on the interview with the officials of legal institution and judges concerning this issue supported by existing regulations. It is argued that many law enforcement officials are still lacking the perspective of the victim and having no understanding on the dynamics of the victims in the aftermath of the crime. Various prevention of secondary victimization has been provided, such as the existence of legal assistance by Rifka Annisa psychological centre as well as the relevant Supreme Court Regulation. During examination in court, judges should prevent and/or reprimand parties, legal counsel, public prosecutors, and/or attorneys who behave or make statements in ways that demean, blame, intimidate and/or use the experience or sexual background of women in conflict with the law. Law Number 12 of 2022 can be implemented immediately so that law enforcement officials can prioritize the interests of victims and implement related procedures for handling victims of sexual violence in the criminal justice system.

**Keywords:** Secondary victimization, Sexual violence, Court hearing process

**Abstrak.** Banyaknya kasus kekerasan seksual terhadap perempuan masih menjadi perhatian yang dihadapi masyarakat Indonesia. Ketika kekerasan seksual terjadi, korban harus melaporkan kejahatan tersebut. Namun, saat menjalani proses menuntut keadilan, tidak jarang korban kekerasan seksual mengalami viktimisasi sekunder dimana korban malah disalahkan atas kejahatan tersebut dan menerima stigma negatif dari aparat penegak hukum. Penelitian ini berfokus pada faktor-faktor kasual terjadinya viktimisasi sekunder bagi korban kekerasan seksual dalam sidang pengadilan dan strategi untuk mencegah fenomena ini. Penelitian ini merupakan gabungan penelitian hukum empiris dan doktrinal yang berfokus pada wawancara dengan pejabat lembaga hukum dan hakim mengenai masalah ini yang didukung oleh peraturan yang ada. Dikatakan bahwa banyak aparat penegak hukum masih kurang perspektif korban dan tidak memahami dinamika korban pasca kejahatan. Berbagai pencegahan viktimisasi sekunder telah diberikan, seperti adanya pendampingan hukum oleh Rifka Annisa dan Peraturan Mahkamah Agung. Selama pemeriksaan di pengadilan, hakim harus mencegah dan/atau menegur pihak, penasihat hukum, penuntut umum, dan/atau pengacara yang berperilaku atau membuat pernyataan yang merendahkan, menyalahkan, mengintimidasi dan/atau menggunakan pengalaman atau latar belakang seksual perempuan yang berkonflik dengan hukum. Peraturan nomor 12 tahun 2022 ini dapat segera diimplementasikan agar aparat penegak hukum dapat mengutamakan kepentingan korban dan melaksanakan prosedur terkait penanganan korban kekerasan seksual dalam sistem peradilan pidana.

**Kata kunci:** Viktimisasi sekunder, Kekerasan seksual, Proses sidang pengadilan

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## INTRODUCTION

This study focuses on the prevention of secondary victimization for victim of sexual violence in the court proceeding. This study is crucial due to the rise of sexual violence,<sup>1</sup> and the lack of protection and justice to be pursued by the victims of such crime.<sup>2</sup> On the 4<sup>th</sup> of November 2017, the rape of a 14-year-old child occurred in Bengkulu which was allegedly committed by 20 perpetrators.<sup>3</sup> However, through letter numbered 013/LPA-Prov.BKL/XI/2017, Child Protection Committee (LPA) of Bengkulu stated that the act of sexual intercourse committed by the perpetrators against a 14-year-old child was not to be considered as rape since it was conducted consensually.<sup>4</sup> In the same letter, LPA Bengkulu further stigmatized the victim by stating that the victim was well known to be prone of sexual behaviours. The response given by LPA is highly concerning since it came from a supposedly protective institution for children, where this institution should have assisted victims of sexual violence, especially child victims.<sup>5</sup>

Chief of Indonesian National Police, General Tito Karnavian, asserted that during the process of victim examination in rape cases, most often than not, police officers unsympathetically asked the victims if they feel alright after being raped or even whether they feel enjoyment during the rape.<sup>6</sup> In the examination process, the officers are notably posing questions such as “Does it feel good when you were raped?” or “Was it enjoyable when you were raped?” towards the victims of sexual violence. Such questions tend to degrade the feelings of the victims and might lead

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<sup>1</sup> Arsa Ilmi Budiarti et al., “An Outlook on Sexual Violence Case Handling In Indonesia: An Analysis on Court Decisions from 2018-2020” (Jakarta, March 2022), <https://ijrs.or.id/wp-content/uploads/2022/05/An-Outlook-On-Sexual-Violence-Case-Handling-In-Indonesia-18-May-2022.pdf>.

<sup>2</sup> Rosania Paradias and Eko Sopyono, “Perlindungan Hukum Terhadap Korban Pelecehan Seksual,” *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 61–72.

<sup>3</sup> Abraham Utama, “Perkosaan Dan Serangan Seksual Terhadap Anak Terus Terjadi: Perppu Kebiri “Tak Efektif?,” <https://www.bbc.com/indonesia/indonesia-42170333>, November 30, 2017.

<sup>4</sup> Maidina Rahmawati, “Kasus Pemerkosaan Anak 14 Tahun Di Bengkulu: Deret Panjang Reviktimisasi Terhadap Korban Kekerasan Seksual,” <https://icjr.or.id/kasus-pemerkosaan-anak-14-tahun-di-bengkulu-deret-panjang-reviktimisasi-terhadap-korban-kekerasan-seksual/>, November 14, 2017.

<sup>5</sup> Rahmawati.

<sup>6</sup> Andylala Waluyo, “Bertemu Aktivis Perempuan, Kapolri Klarifikasi Soal Pemeriksaan Korban Perkosaan,” <https://www.voaindonesia.com/a/bertemu-aktivis-perempuan-kapolri-klarifikasi-soal-pemeriksaan-korban-pemerkosaan/4083634.html>, n.d.

to further post-traumatic effect suffered by the victim.<sup>7</sup> People would hear the question and might think that there is nothing wrong with the posing of the question. However, victims of sexual violence who had experienced the incident firsthand would be experiencing post-traumatic effects and reminiscent related to the crime.<sup>8</sup> The questions also give the impression as if the examiners are doubting the credibility of the victim's testimony.

Criminal proceedings can cause physiological harm to the victims.<sup>9</sup> In this sense, the said harm must be considered as a serious undesirable effect of the criminal justice system and an instance of secondary victimization of the victims.<sup>10</sup> Secondary victimization has been defined as a negative social or societal reaction as a consequence of primary victimization.<sup>11</sup> It is experienced as a further violation of legitimate rights or entitlements by the victim.<sup>12</sup> Besides effects on the psychological difficulties caused by the primary victimization, secondary victimization by criminal proceedings could negatively influence other physiological variables such as the victim's self-esteem, faith in the future, trust in the legal system, and faith in a just world.<sup>13</sup>

The importance of legal protection towards the victims of sexual violence is one of the reasons behind the enactment of Law No. 13/2006 on Witness and Victim Protection as amended by Law No. 31/2014.<sup>14</sup> The Law regulates an institution mandated to provide the protection and assistance to witnesses and victims, known

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<sup>7</sup> BBC News, "Tito Karnavian: Korban Perkosaan Bisa Ditanya Oleh Penyidik 'apakah Nyaman' Selama Perkosaan?," <https://www.bbc.com/indonesia/indonesia-41676366>, n.d.

<sup>8</sup> Byba Melda Suhita, Nofita Ratih, and Kurniawan Edi Priyanto, "STRADA Jurnal Ilmiah Kesehatan Psychological Impact On Victims of Sexual Violence: Literature Review STRADA Jurnal Ilmiah Kesehatan," *STRADA Jurnal Ilmiah Kesehatan* 10, no. 1 (2021): 1412–23, <https://doi.org/10.30994/sjik.v10i1.825>.

<sup>9</sup> Jim Parsons and Tiffany Bergin, "The Impact of Criminal Justice Involvement on Victims' Mental Health," *Journal of Traumatic Stress* 23, no. 2 (April 11, 2010): 182–88, <https://doi.org/10.1002/jts.20505>.

<sup>10</sup> C. Villacampa, G. Filella, and J. Tamarit, "Secondary Victimization and Victim Assistance," *European Journal of Crime, Criminal Law and Criminal Justice* 18, no. 3 (2010): 281–98, <https://doi.org/10.1163/157181710X12767720266049>.

<sup>11</sup> Villacampa, Filella, and Tamarit.

<sup>12</sup> Nicole Maiorano, Áine Travers, and Frédérique Vallières, "The Relationship Between Rape Myths, Revictimization by Law Enforcement, and Well-Being for Victims of Sexual Assault," *Violence Against Women* 29, no. 14 (November 1, 2023): 2873–90, <https://doi.org/10.1177/10778012231196056>.

<sup>13</sup> Uli Orth, "Secondary Victimization of Crime Victims by Criminal Proceedings," *Social Justice Research*, vol. 16, 2002.

<sup>14</sup> Dudung Mulyadi, "Efektivitas Undang-Undang Nomor 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban," *Jurnal Ilmiah Galuh Justisi* 4, no. 1 (2016), <https://doi.org/http://dx.doi.org/10.25157/jigj.v4i1.408>.

as the Witness and Victim Protection Agency (LPSK). LPSK is tasked with the duty and authority to protect and to assist witnesses and victims.<sup>15</sup> The scope of protection by LPSK covers all stages of the criminal justice system so that the witnesses and/or victims would feel safe when providing their testimony.<sup>16</sup> The Law guarantees proper protection to parties in need and fulfills the rights of witnesses and/or victims in the criminal justice process. The protection of victims of sexual violence is regulated in the Law of the Republic of Indonesia Number 12 of 2022 on the Criminal Acts of Sexual Violence. The enactment of this Law is a form of optimization of the previous legislative arrangements related to sexual violence, which are still considered below average in providing prevention, protection, access to justice and recovery, thus is yet to satisfy the needs and the rights of the victims of sexual violence and have not been a comprehensively regulated procedural law.<sup>17</sup>

The present study is aimed at investigating the reasons why secondary victimization still occurs despite the laws on the protection of victim of sexual violence have been enacted, and the determination on how the law enforcement official in the criminal justice system handle the victims of sexual violence during the court hearing to prevent the occurrences secondary victimization. This does not occurs in the initial criminal act but through institutional and individual responses or treatments toward the victims. Institutional responses can come from institutions of the criminal justice system, social institutions, or government institutions. In addition, secondary victimization is most prevalent and appears in the flow of criminal justice system.<sup>18</sup>

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<sup>15</sup> Saristha Natalia Tuage, "Perlindungan Hukum Terhadap Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (LPSK)," *Lex Crimen* 2, no. 2 (2013), <http://repository.unand.ac.id/17037/1/FUNGSILE>.

<sup>16</sup> Sofyan Rauf, Hasjad Hasjad, and Sabri Guntur, "EFEKTIFITAS PERAN LEMBAGA PERLINDUNGAN SAKSI DAN KORBAN (LPSK) DALAM MELINDUNGI SAKSI TINDAK PIDANA GRATIFIKASI," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 3 (February 26, 2022): 203–18, <https://doi.org/10.54443/sibatik.v1i3.26>.

<sup>17</sup> Prianter Jaya Hairi and Marfuatul Latifah, "Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual (Implementation of Law Number 12 of 2022 on Criminal Acts of Sexual Violence)," *Negara Hukum* 14, no. 2 (2023), <https://doi.org/http://dx.doi.org/10.22212/jnh.v14i2.4108>.

<sup>18</sup> Mahrus Ali, *Victimology*, Ctk. Pertama, First Edition, PT RajaGrafindo Persada, Depok, 2021, p. 40.

## METHODOLOGY

The present study is a combined empirical and doctrinal legal research. To identify the answers for the first focus of this study, an interview with the official of Rifka Annisa Women's Crisis Centre located in Yogyakarta Province has been conducted. At this stage, the major questions were on the common factors contributing to the occurrence of secondary victimization for victims of sexual violence during the court hearing when handling and assisting such cases. The authors likewise interviewed the judges who heard the cases of sexual violence wherein women were the victims. The interviews focused on the kinds of strategies or measures that have been taken to prevent and minimize secondary victimization in the court proceeding. The findings were analyzed pursuant to the Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases of Women Against the Law.

## RESULT AND DISCUSSION

### **Why Secondary Victimization Still Occurs in Court Proceeding against Victims of Sexual Violence?**

Victims of sexual violence during the criminal justice process are in a vulnerable position.<sup>19</sup> Victims will undergo a long and tiring criminal justice process that can cause excessive stress.<sup>20</sup> This is due to the need for victims to re-tell incidents of sexual violence over and over again to law enforcement officials so that cases of sexual violence can be processed, and evidence can be drawn based on the victim's firsthand witness testimony.<sup>21</sup> When assisting victims of sexual violence at the examination stage, secondary victimization towards victims of sexual violence often takes place, wherein law enforcement officials poses negative stigma and conducts

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<sup>19</sup> Priyono/Tri Febrianto et al., "Sexual Violence and the Healing Process of the Victims," *Jurnal Sosiologi Dialektika* 17, no. 1 (June 19, 2022): 109–19, <https://doi.org/10.20473/jsd.v17i1.2022.109-119>.

<sup>20</sup> Maarten Kunst, Lieke Popelier, and Ellen Varekamp, "Victim Satisfaction With the Criminal Justice System and Emotional Recovery," *Trauma, Violence, & Abuse* 16, no. 3 (July 28, 2015): 336–58, <https://doi.org/10.1177/1524838014555034>.

<sup>21</sup> Komnas Perempuan, "Pengantar Memahami UU Tindak Pidana Kekerasan Seksual" (Jakarta, 2023).

victim blaming behavior against the victims.<sup>22</sup> Often the victim is given questions that are cornering them, such as “why have you just reported it now, while the incident occurred a long time ago?”; “why did you want to be invited to go to a place like that?” or passive aggressive statement such as “you do not have to think too much about it, nothing was damaged anyway”.<sup>23</sup> As victims of sexual violence who have been deprived of their rights by others and are in a traumatized psychological condition after the crime, making the decision to be courageous and report the sexual violence that occurred to them is tremendously difficult. Many victims ultimately decide not to report the sexual violence and choose to remain silent for fear of being negatively stigmatized both by individuals around them as well as by law enforcement officials who will handle the case.<sup>24</sup>

Victim blaming behavior will have a negative impact on victims of sexual violence. After becoming a victim, there will be several psychological disorders experienced by victims such as Post-Traumatic Stress Disorder (PTSD),<sup>25</sup> in which if victims of sexual violence experience excessive stress due to the criminal act, it will trigger PTSD which if not handled properly will lead to the victim’s drive to commit suicide; psychological pressure can also trigger physical symptoms, victims of sexual violence will experience trauma and in most cases, it is difficult for someone to deal with the trauma, hence when under heavy psychological pressure, the body will begin to be overwhelmed and cause several physical symptoms such as muscle pain, headaches, and even chronic physical health problems.<sup>26</sup> The psychological condition of victims who have experienced deep trauma will worsen when they

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<sup>22</sup> I Made Wirya Darma, I Gusti A A Mas Triwulandari, and Dewi Bunga, “VICTIM BLAMING: LABELING FOR WOMEN VICTIMS OF SEXUAL VIOLENCE IN HUMAN RIGHTS PERSPECTIVE,” *International Journal of Law Reconstruction* 6, no. 2 (September 26, 2022): 212, <https://doi.org/10.26532/ijlr.v6i2.23887>.

<sup>23</sup> Rukman Rukman, Yeni Huriani, and Lily Suzana binti Haji Shamsu, “Stigma Terhadap Perempuan Korban Kekerasan Seksual,” *Jurnal Iman Dan Spiritualitas* 3, no. 3 (October 31, 2023): 447–54, <https://doi.org/10.15575/jis.v3i3.29853>.

<sup>24</sup> Australian Institute of Criminology., Denise. Lievore, and Australia. Dept. of Family and Community Services. Office for Women., *No Longer Silent: A Study of Women’s Help-Seeking Decisions and Service Responses to Sexual Assault* (Department of Family and Community Services, 2005), <https://www.aic.gov.au/sites/default/files/2020-05/no-longer-silent-a-womens-help-seeking-decisions-and-service-responses-to-sexual-assult.pdf>.

<sup>25</sup> Saet Byeol Yang et al., “Central Symptoms of Post-Traumatic Stress Disorder on Adult Victims of Sexual Violence: A Network Analysis,” *Medicine (United States)* 102, no. 27 (July 7, 2023): E34083, <https://doi.org/10.1097/MD.00000000000034083>.

<sup>26</sup> Lori Haskell and Melanie Randall, *The Impact of Trauma on Adult Sexual Assault Victims* (Canada: Department of Justice Canada, 2019), [https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf).

receive victim blaming treatments, and such treatments will only give victims the perception that they are at fault and are the cause of the crime or make them believe that they contributed to the sexual violence that befell them.

Secondary victimization in the form of victim blaming still often occurs because the law enforcement officials are unable to see from the victim's perspective.<sup>27</sup> Inability to see from the victim's perspective surfaces when the law enforcement officers does not have a pro-victim attitude and do not understand the dynamics of the victim. The impact that occurs due to the lack of perspective of victims of sexual violence will lead to victim blaming behavior and the imposition of negative stigma on victims.<sup>28</sup> Conditions where victims experience prolonged trauma, have concerns about telling stories related to criminal acts of sexual violence that occur will result in victims not immediately reporting criminal acts of sexual violence that befall them.

When the law enforcement officials who conduct the case examinations pose negative stigma to the victims, such as by asking "why the report has only been made in that instance while the criminal act has long occurred", as it is a question that underestimates the trauma felt by the victim and contains no effort to understand what the victim has experienced. The victim needs more strength to be brave and finally decide to report the sexual violence they experienced.<sup>29</sup> If a victim who is in a traumatized state in the aftermath of the crime must deal with the law enforcement officials who blame them secondarily, this will worsen the victim's psychological condition. Some might assume that the victim's psychological condition after the crime might not be that serious because they may look normal on the outside.<sup>30</sup> In some people, their psychological condition will not be displayed

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<sup>27</sup> Mahrus Ali and Rena Yulia, "Finding the Factors and Proposing the Solution for Preventing Secondary Victimization," *Academic Journal of Interdisciplinary Studies* 12, no. 5 (September 1, 2023): 262–73, <https://doi.org/10.36941/ajis-2023-0150>.

<sup>28</sup> Siti Mas'udah, "The Meaning of Sexual Violence and Society Stigma Against Victims of Sexual Violence," *Society* 10, no. 1 (June 30, 2022): 1–11, <https://doi.org/10.33019/society.v10i1.384>.

<sup>29</sup> Sonya Hellen Sinombor, "People Are Becoming More Sensitive and Brave Enough to Report Cases of Violence," <https://www.kompas.id/baca/english/2024/01/05/en-masyarakat-makin-peka-dan-berani-laporkan-kasus-kekerasan>, January 6, 2024.

<sup>30</sup> James K Hill, "Victims' Response to Trauma and Implications for Interventions: A Selected Review and Synthesis of the Literature" (Canada, 2003).

directly on their face, behavior, and various other features that can be seen visually. However, the victim's psychological condition will affect the victim's thinking patterns, will change the victim's perspective regarding several things in life, and worse, will lead to a strong suicidal thought.

By possessing the ability to see from the victim's perspective, the law enforcement officials will be able to pay attention to the position of the victim who will act as a witness in the trial, the law enforcement officials will also understand the interests and suffering of the victim as a result of the crime of sexual violence that occurred so that what is hoped by the victim against the perpetrator can more or less be concretized in the judge's decision. The judge can consider the severity of the punishment to be imposed on the defendant by looking at how much suffering the victim of sexual violence has experienced.<sup>31</sup> This consideration can also be measured based on how much trauma the victim has experienced, what physical injuries the victim has suffered as a result of the sexual violence, and other factors that can be taken into consideration.<sup>32</sup> This victim's perspective can be used as a guideline in an effort to correct victim blaming treatments carried out by the law enforcement officials which results in secondary victimization against victims of sexual violence.

Patriarchal culture also plays a role in shaping the society's mindset. Gender differences have created various injustices, especially for women.<sup>33</sup> In Indonesia, the habit of blaming the victim is strongly influenced by patriarchal culture, an ideology that recognizes the unequal relationship between women and men.<sup>34</sup> In this patriarchal culture, the position of men is more dominant, more influential, while women are positioned as subordinates. As a result, men demand respect and obedience from women in various aspects of life. Sexual violence often put women

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<sup>31</sup> I Gusti Ngurah Parwata, *Bahan Ajar Mata Kuliah Victimologi: Peranan Korban Terjadinya Kejahatan* (Denpasar: Universitas Udayana, 2017).

<sup>32</sup> Interview with Ms. Sri Mawar Indah KD, S.H., BA Ditreskrimum, and Ms. Lucy Anesya Wardani, S.H., BA Ditreskrimum POLDA DIY

<sup>33</sup> Anak Agung Mia Intenilia, "Analyzing Patriarchy, Political Participation, and Active Citizenship in ASEAN," *Intermestic: Journal of International Studies* 5, no. 1 (November 30, 2020): 12, <https://doi.org/10.24198/intermestic.v5n1.2>.

<sup>34</sup> Selandin Tyas Pangesti Latra Wijayanti Nengah and Made Karisma Sukmayanti Suarya, Luh, "Fenomena Victim Blaming Fenomena Victim Blaming Pada Korban Kekerasan Seksual: Kajian Literatur," *Psychopolitan: Jurnal Psikolog* 7, no. 1 (2023).



in a vulnerable position to be victims, and in a position where they are vulnerable to being blamed when they are victims of sexual violence.<sup>35</sup> In cases of sexual violence where most of the victims are women, the culture of victim blaming is being further normalized. This act of victim blaming can be done by anyone including the perpetrator of the crime, the law enforcement officials, and other individuals. The intention of the person who commits victim blaming is to get away with the crime they committed by putting the blame on the victim such as planting the perception that, “I committed this rape because the victim was wearing revealing clothes and was inviting my lust”. Statements like this that are usually issued by the perpetrator of rape to justify the crime that has occurred.

Victim blaming by the law enforcement officials likewise often occurs to victims of sexual violence when undergoing the criminal justice process by asking questions such as, “you are a woman, why do you want to go to a place like that”, implying that women must comply with things that should not be done based on standards recognized by society so that something awful like rape would not befall them (the victims). When a rape occurs, there should be no justification. The important thing to do is to acknowledge and realize that the rape happened because the perpetrator wanted to rape the victim. The lack of understanding of the law enforcement officials related to the psychological dynamics of victims after the sexual violence occurred, is also one of the reasons why secondary victimization still happen to this day.<sup>36</sup> The dynamics of victims of sexual violence differ between when they have not become victims of sexual violence and after being victims of sexual violence. Victims will have fears for their future, feel frightened, be angry with themselves for not being able to fight back, and even want to commit suicide. If the law enforcement officers do not understand the dynamics of victims, then this will result in officers not providing treatment to victims of sexual violence as they should be treated and

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<sup>35</sup> Budiarti et al., “An Outlook on Sexual Violence Case Handling In Indonesia: An Analysis on Court Decisions from 2018-2020.”

<sup>36</sup> Karen McQueen and Jodie Murphy-Oikonen, “Responding to Sexual Assault: A Systematic Review of Police Training Interventions and Outcomes,” *Crime and Delinquency*, 2023, <https://doi.org/10.1177/00111287231195763>.

thus can also exhibit an attitude of underestimating the impact of criminal acts that occur.

### **Preventing Secondary Victimization for Victims of Sexual Violence during Court Proceeding**

The handling of female victims of sexual violence has its own procedures, which refer to Law No. 12 of 2022, and to Supreme Court Regulation No. 03 of 2017. Before the trial begins, victims of sexual violence shall receive special treatment. For instance, the Yogyakarta District Court has a special room called the “relaxation room” which is provided for female victims of sexual violence.<sup>37</sup> In cases where the victim does not want to see the perpetrator during the examination of the victim’s witness testimony at trial, the judge will ask the perpetrator to leave the courtroom when the examination of the victim is about to take place. After the examination is complete, the victim leaves the courtroom, the defendant will re-enter the courtroom, and the victim’s statement will be conveyed by the judge to the defendant and asked if there are any statements of the victim that will be refuted by the defendant. If the victim’s psychological state is severely impaired due to the crime and the female victim is unable to conduct the examination in court in person, the judge will then allow the examination to be conducted via audio-visual means.<sup>38</sup>

The consideration in the aggravation of charges against the perpetrator can be seen from the analysis of the psychological condition of the victim because the psychological impact after the criminal act is related to the criminal act, the greater the psychological impact felt by the victim, the more severe the criminal act that occurred. The decision as much as possible contains these three important elements, namely, philosophical, juridical, and sociological.<sup>39</sup> The judge will refer to these 3 aspects, from a juridical perspective it can be seen from the law, sociology can be

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<sup>37</sup> Interview with Judge Tri Asnuri Herkuto, S.H., M.H., one of the judges at the Yogyakarta District Court

<sup>38</sup> Supreme Court (Mahkamah Agung), “Supreme Court of the Republic of Indonesia Number 3 of 2017 Concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law” (n.d.).

<sup>39</sup> Satjipto Rahardjo, *Bunga Rampai Permasalahan Dalam Sistem Peradilan Pidana* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum, 1998).

seen from the community, and this philosophy is the principle of expediency.<sup>40</sup> In this decision, the principle of expediency of prosecution for victims of sexual violence must be considered trauma that felt by the victim cannot be calculated using monetary measures, and after the verdict and trial are over, no further protection can be given to victims of sexual violence. The negative stigma that has been attached to victims of sexual violence can have a worse impact on the victim's psychology who have been victims of sexual violence.<sup>41</sup> After the victim undergoes the criminal justice process, the protection provided by the state through the law enforcement officials is also completed. This is one of the issues that the judge of Yogyakarta State District Court sir Tri Asnuri Herkutanto is concerned about for victims of sexual violence, namely the impact that will occur to victims after the victim has finished undergoing justice.<sup>42</sup> Therefore, this poses as a problem and urgency that is needed by the community, namely the rights of victims of sexual violence after the completion of the trial.

Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases of Women Against the Law intends to protect women from discrimination and ensure equal protection for all people based on any grounds, including gender. To assure the world of the state's obligation to ensure that women have access to justice and are free from discrimination in the justice system. The newest regulation on criminal offense of sexual violence is law No. 12 of 2022 which provides the procedures of handling the victim of sexual violence during the hearing process in court.

Preventing secondary victimization for victim of sexual violence during court hearings based on  
Supreme Court Regulation No. 3 of 2017 and Law No. 12 of 2022

The prevention of secondary victimization	Supreme Court Regulation No. 3 of 2017	Law No. 12 of 2022
Examination of cases in a closed session		Examination of cases of sexual violence shall be conducted in a closed session (Article 58)

<sup>40</sup> Rahardjo.

<sup>41</sup> Mas'udah, "The Meaning of Sexual Violence and Society Stigma Against Victims of Sexual Violence."

<sup>42</sup> Interview with Judge Tri Asnuri Herkutanto, S.H., M.H., one of the judges at the Yogyakarta District Court

<p>The judge must keep the identity of witnesses and/or victims</p>		<p>In reading out a verdict, the judge must keep confidential information containing the identity of witnesses and/or victims in the verdict or court order (Article 59)</p>
<p>The attitude of the judge must not demean, blame, and/or intimidate women in conflict with the law</p>	<p>Judges must not show attitudes or pose questions that demean, blame, and/or intimidate women in conflict with the law, justify discrimination against women using culture, customary rules, and other traditional practices, or use gender-biased expert interpretations, question and or consider the experience or background of the victim’s sexuality as a basis for acquitting the perpetrator or reducing the perpetrator’s sentence, and issue statements or views that contain gender stereotypes (Article 5)</p>	<p>Examination of witnesses and/or victims shall be conducted by upholding their human rights, honor, and dignity, without intimidation, and without justifying their guilt, way of life, and decency, including the sexual experience of witnesses and/or victims with questions that are incriminating or unrelated to the crime of sexual violence as a reason to alleviate the defendant (Article 60);</p>
	<p>During examination in court, judges should prevent and/or reprimand parties, legal counsel, public prosecutors, and/or attorneys who behave or make statements that demean, blame, intimidate and/or use the experience or sexual background of women in conflict with the law (Article 7)</p>	<p>Questions and/or statements that are demeaning, blaming, intimidating, and use sexual experiences and/or backgrounds shall not be posed (Article 60)</p>
<p>Provide the necessary facilities and protection to enable the witness or victim to give testimony</p>		<p>The court shall endeavor to provide the necessary facilities and protection to enable the witness or victim to give testimony (Article 61)</p>

The judge may grant the request to present a companion	Suppose the victim is physically or psychologically challenged and requires assistance. In that case, the judge may advise the victim to present a companion, and the judge may grant the request to present a companion (Article 9).	The panel of judges may order the institution providing assistance to replace the victim's advocate at the victim's request, the victim's family, or guardian (Article 62)
Consider the recovery of victims		Judges and public prosecutors explore and consider the special circumstances behind the crime of sexual violence and/or the impact on victims (Article 60);
		The panel of judges shall consider the recovery of victims in the verdict as provided in the law (Article 63)
The principles of respect for human dignity	Must be based on the principles of respect for human dignity, non-discrimination, gender equality, equality before the law, principle of justice, benefit and legal certainty (Article 5)	Examination of witnesses/ victims/ suspects/ defendants by upholding human rights, honor, dignity, without intimidation, and not justifying mistakes, not victimizing the way of life and morality, including sexual experiences with questions that are ensnaring or that cause facial trauma Victims of or who are not related to a crime of sexual violence (Article 22)

In the examination of female victims of sexual violence at the Yogyakarta District Court, there has already been established a decent procedure for handling victims of such violence and can eliminate most of the possibility of secondary victimization. As in these procedures the judge must pose questions by upholding human rights, as opposed to questions that demean the victim, not justifying the criminal acts based on the background of the victim, reprimanding parties in the trial when issuing questions and statements that demean the victim. The Yogyakarta District Court has also set up a special room for female victims of sexual violence, called the

relaxation room which is specifically designed for victims of sexual violence. Legal assistance will also be provided to victims of sexual violence who need it, and audio-visual examinations can be conducted with the approval of the judge if the victim has health, safety or other legitimate reasons that prevent them from appearing before the court.

Although there have been several preventions of secondary victimization provided to victims of sexual violence at the examination in court, there remain frequent cases where the law enforcement officials continue to provide statements and questions that blame the victim at the examination in court. In accordance with Supreme Court Regulation No. 03 of 2017, Article 7 states that “during examination in court, judges should prevent and/or reprimand parties, legal counsel, public prosecutors, and/or attorneys who behave or make statements that demean, blame, intimidate and/or use the experience or sexual background of women in conflict with the law.” Based on the results of an interview with Lisa Oktavia as Executive Manager of Assistance at Rifka Annisa Women’s Crisis Centre, there are still frequent cases wherein during the examination, questions and statements that blame the victim are still often made by individuals involved in the court.<sup>43</sup> When that occurs, some judges do not give a warning to the individual and just let it slip. Therefore, the Supreme Court Regulation does not guarantee that secondary victimization will not occur in court.

It is then understood that if victim blaming occurs, victims cannot do anything about the treatment they receive. What can be done by legal advocates when assisting victims who receive victim blaming behavior is to discuss with the law enforcement officials to understand the victim’s perspective and to understand how the victim’s psychological condition after the crime. With the understanding of the law enforcement officials related to these two aspects, it will be a factor towards successful handling of victims of sexual violence. Many law enforcement officers already have a good understanding of the victim’s perspective and psychological

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<sup>43</sup> Interview with Lisa Oktavia, S.H., PLT Manager of the Assistance Division at Rifka Annisa Women's Crisis Center.

dynamics, but it would be better if most, if not all law enforcement officers can understand how to handle victims of sexual violence.

## **CONCLUSION**

Secondary victimization in the form of victim blaming still often occurs at the examination stage in court due to the fact that many law enforcement officers who handle sexual violence cases do not see the case from the victim's perspective and do not understand the dynamics of the victims. Victims in a traumatized condition after the crime must be faced with court processes that put the victims in a vulnerable position. The lack of protection provided by the law enforcement officials to victims of sexual violence can cause excessive stress to victims. The lack of a victim's perspective by law enforcement officers results in a lot of negative stigma being given to victims of sexual violence when they undergo the criminal justice process. The patriarchal culture embedded in Indonesia also plays a role in the victim blaming culture that often occurs towards victims of sexual violence. Considering the patriarchal mindset places the position of women below men. In addition, the intention of the person who commits victim blaming behaviours against victims of sexual violence is to get away with the crime they committed by putting the blame on the victim instead. Judges handling cases of sexual violence against female victims must refer to Supreme Court Regulation No. 03 of 2017, which regulates how to best handle victims so that the victims in undergoing the court process can have all their rights respected and protected.

## **COMPETING INTEREST**

There is no conflict of interest in the publication of this article

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