PROTECTION OF WOMEN VICTIMS OF SEXUAL VIOLENCE IN INDONESIA IN PERSPECTIVES OF THE 1945 CONSTITUTION AFTER THE AMENDMENT

a Nursiti, b Alvi Syahrin, c Faisal, d Mohd Din,

ABSTRACT

Background: After the 1998 reform, the amendments to the 1945 Constitution which were carried out, have brought about changes in the Indonesian state administration, the recognition, respect and protection of Human Rights (HAM) has become an important change clause in the NRI constitution. Several legal instruments related to protecting women from sexual violence, the latest legal product being Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, demonstrate this commitment.

Objective: The aim of this research is to analyze legal norms in various court decisions regarding the protection of women victims of sexual violence in Indonesia. Next, to look for a comprehensive concept of protection for women victims of sexual violence in national legal policies in Indonesia.

Theoretical framework: This article will discuss and analyze the changes brought about by the 1945 Constitution after the amendments, especially regarding the protection of women against sexual violence. The extent to which the amendments to the 1945 Constitution have changed regarding the protection of women victims of sexual violence. There are contradictions regarding the condition of national criminal law regarding protective legal norms and sexual violence. This research proposes that there should be synchronization and harmonization efforts in national criminal law policies, in line with the 1945 Constitution which has been amended to ensure that the protection of women victims of sexual violence can be strategic and effective in Indonesia. In general, it provides benefits to help Indonesia carry out legal arrangements or reforms related to national criminal policies in line with the 1945 Constitution.

Method: In this research, normative legal research methods are used to solve the legal problems being faced. This research to use several statutory approaches, a conceptual approach, a historical approach, a comparative approach and an analytical approach.

Keywords: sexual violence, victimology, women victims.
PROTEÇÃO DAS MULHERES VÍTIMAS DE VIOLÊNCIA SEXUAL NA INDONÉSIA EM PERSPECTIVAS DA CONSTITUIÇÃO DE 1945 APÓS A ALTERAÇÃO

RESUMO

Antecedentes: Após a reforma de 1998, as alterações à Constituição de 1945 que foram realizadas, provocaram alterações na administração estatal indonésia, o reconhecimento, o respeito e a proteção dos direitos humanos (CMA) tornaram-se uma importante cláusula de alteração na Constituição do NRI. Vários instrumentos legais relacionados à proteção das mulheres contra a violência sexual, sendo o produto legal mais recente a Lei número 12 de 2022 sobre Atos Criminosos de Violência Sexual, demonstram esse compromisso.

Objetivo: O objetivo desta pesquisa é analisar as normas legais em várias decisões judiciais relativas à proteção das mulheres vítimas de violência sexual na Indonésia. Em seguida, procurar um conceito abrangente de proteção para mulheres vítimas de violência sexual nas políticas legais nacionais na Indonésia.

Quadro teórico: Este artigo discutirá e analisará as mudanças trazidas pela Constituição de 1945 após as emendas, especialmente no que diz respeito à proteção das mulheres contra a violência sexual. A medida em que as alterações à Constituição de 1945 mudaram no que diz respeito à proteção das mulheres vítimas de violência sexual. Há contradições quanto à condição do direito penal nacional em relação às normas legais de proteção e violência sexual. Esta pesquisa propõe que haja esforços de sincronização e harmonização nas políticas nacionais de direito penal, em conformidade com a Constituição de 1945, que foi alterada para garantir que a proteção das mulheres vítimas de violência sexual possa ser estratégica e eficaz na Indonésia. Em geral, proporciona benefícios para ajudar a Indonésia a realizar acordos legais ou reformas relacionadas com as políticas criminais nacionais em conformidade com a Constituição de 1945.

Método: Nesta pesquisa, métodos de pesquisa legal normativa são usados para resolver os problemas legais que estão sendo enfrentados. Esta pesquisa utiliza várias abordagens estatutárias, uma abordagem conceitual, uma abordagem histórica, uma abordagem comparativa e uma abordagem analítica.

Palavras-chave: violência sexual, vitimologia, mulheres vítimas.

1 INTRODUCTION

After the 1998 Reformation, Indonesia's constitutional reform was carried out through the process of amending the 1945 Constitution four (4) times. The focus of the amendment is the restructuring of Indonesia's state administration regarding democracy, relations between state institutions (Executive, Judicial and Legislative), Law, Government, Central and Regional Relations, and Human Rights (HAM).
The results are summarized in the amended 1945 Constitution, where there are various changes to both articles and verses in the constitution of the Republic of Indonesia (NRI). One of the important issues in the amendment process to the 1945 Constitution is the effort to structure Indonesia as a legal state as written in Article 1 paragraph (3) "The Indonesian state is a legal state", which is followed up with several articles, including; Article 24 paragraph (1), which states that the judicial power administers justice to uphold law and justice. Then, Article 24B concerns the presence of a Judicial Commission which has the task of ensuring that supreme judges and judges maintain their honor, dignity and behavior. Next is Article 24C concerning the Constitutional Court, then Article 27 concerning legal equality without exception. All of this clearly shows that law is an important aspect of state administration.

Furthermore, the 1945 Constitution, in the amendment process, also underwent changes including the state's commitment to implementing human rights through Articles 28A-28J. The presence of these articles is an important foundation in building a more democratic state administration, where the principles of equality, non-discrimination, non-violence and other important principles are the emphasis. Apart from that, it emphasizes that Indonesia is a rule of law state whose characteristics include respect and protection of human rights.

This article will discuss and analyze the changes brought about by the 1945 Constitution after the amendments, especially regarding the protection of women against sexual violence. The extent to which the amendments to the 1945 Constitution have changed regarding the protection of women victims of sexual violence is what this article seeks to answer.

2 THEORETICAL FRAMEWORK

Sexual violence against women is currently a case experienced by many countries, including Indonesia. The Ministry of Women's Empowerment and Child Protection (PPPA) noted that throughout 2022, there will be 25,050 women who are victims of sexual violence. This number increased by 15.2% from 2021. If analyzed, sexual violence experienced by women from 2016 to 2022 has increased significantly.

Referring to WHO data, in 2021 it was reported that one in three women worldwide would be victims of physical sexual violence, the number reaching 852 million women, especially those aged 15-49 years. According to the Director General of WHO, Tedros Adhanom Ghebreyesus, this condition shows that violence against women has become an epidemic in every country. The Covid-19 condition has also worsened this situation and conditions. Husbands were found to be the main or common perpetrators of sexual violence experienced by women.6

On the other hand, efforts to stop sexual violence against women have been made both internationally and nationally. On a global scale, currently there are several important instruments in the context of protecting women, such as those formulated in the General Declaration of Human Rights, the Convention against Discrimination Against Women (CEDAW), the Civil and Political Rights Convention, the Economic, Social and Cultural Convention. All of these conventions have also been ratified by the Indonesian Government, which then requires Indonesia to comply with them, including in their implementation.

On a national scale, efforts to encourage and develop protective instruments for women, especially those related to being victims of sexual violence, have also begun to be carried out and developed by various countries, including Indonesia. Indonesia itself, as a signatory to various international instruments, especially CEDAW and several other conventions, has also begun to develop legal instruments to protect women victims of sexual violence.

After the 1998 reform, the amendments to the 1945 Constitution which were carried out, have brought about changes in the Indonesian state administration, the recognition, respect and protection of Human Rights (HAM) has become an important change clause in the NRI constitution. The existence of various articles as previously described explicitly emphasizes Indonesia’s position within the human rights framework. Apart from that, several legal instruments related to protecting women against sexual violence, the latest of which is Law Number 12 of 2022 concerning the Crime of Sexual Violence, shows this commitment.

3 METHODOLOGY

This research uses normative legal research methods by considering empirical aspects as additional data, where several data and information are presented to support the analysis. Research that uses methods like this is usually known as doctrinal legal research methods. Normative legal research is a research method in the legal field that is carried out using literature or secondary data. Substantially, research using this method is intended to analyze law as regulations or laws that are considered norms for society.

According to Johnny Ibrahim, there are several requirements for conducting research, namely researchers must understand the basic concepts of knowledge and research methods on the research topic. The system is related to the concept and content of knowledge, and the method is related to the formal aspects. In other words, a system is a systematic knowledge or overall knowledge, while a method represents how that knowledge is achieved. As normative knowledge, law has a unique method for solving problems faced by society. This research also uses several statutory approaches, a conceptual approach. Conceptual approach, historical approach, comparative approach and analytical approach.

4 RESULTS AND DISCUSSION

4.1 DIFFERENT MEANINGS

Violence Until now, sexuality does not have a standard definition either globally or nationally. Or in other words, there is no definition that is generally accepted by various countries. In the UN Declaration on the Elimination of Violence Against Women (CEDAW), it is stated that sexual violence is part of acts of violence against women. In article 1 it is confirmed that: “the term against violence women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

---

8Amiruddin and Zainal Asikin, (2004), Introduction to Legal Research Methods, Kencana, Jakarta, page. 118,
9Johnny Ibrahim and Hardijan Rusli, (2006), Normative Legal Research Methods: Faculty of Law, Pelita Harapan University. Vol. V.No. J.
10UN General Assembly Resolution Number 48/104 (Resolution adopted by the General Assembly 48/104), Declaration on the Elimination of Violence against Women, 20 December 1993
WHO itself in its report the World Report on Violence and Health 2002 mentioned sexual violence: “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and word.”

Definition established by WHO states that sexual violence in a broad sense is not limited to acts of rape which are considered to constitute physical coercion, as well as other forms such as forced touching and so on. Then in the Rome Statute of the International Criminal Court, in article 7 paragraph (1) letter (g) it is determined that: “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, constitutes a crime against humanity.”

Furthermore, sexual violence is explained further in the elements of crime (The Elements of Crimes ICC): “an act of sexual nature against one or more persons or caused such person or persons to engage in an act of sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or person or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.”

The lack of a common understanding of sexual violence as described above is an illustration of the complexity of the problem of sexual violence itself. In fact, understanding that is not placed in a standard or general position can open up wide space and access to help stop sexual violence. Sexual violence is not only a physical problem, but also non-physical, which ends in violence based on sexuality, especially against women.

In the next phase of development, in the development of legal science, sexual violence is a crime. Many countries include sexual violence as a crime, especially rape as an offence, although the regulations are different. In Germany starting in 2016, sexual crimes are interpreted broadly, not only in terms of the physical appearance of the victim. The existence of resistance as a form of statement of "no or refusal", sexual activity stated


by the victim but ignored by the perpetrator or other people who continue to insist, will result in the person being brought to court.

Then in France, almost the same as Germany, sexual crimes are also interpreted broadly and perpetrators can be brought to justice, especially rape. The point is that refusal and coercion are criminal acts, and can be prosecuted in court, and can potentially result in a sentence of up to 20 years. Then in Germany itself, the same as France, has very severe penalties. Likewise with Italy, where perpetrators of rape are sentenced to 10 years in prison. In 1996 Italy expanded the definition of sexual crimes to include coercion in marriage. 13

In Switzerland, the definition of rape is limited to vaginal penetration. However, the meaning of sexual crimes is almost the same as in Germany, France and Italy. The point is that coercion can be considered a crime. The punishment for sexual crimes is the same as in Italy, punishable by 10 years in prison and this has been in place since 2014 14.

In Indonesia, cases of sexual crimes against women reported to service institutions continue to increase every year. The National Commission for the Protection of Women (hereinafter abbreviated as Komnas Perempuan), recorded that during 1998-2010, it showed that of the 400,939 cases of violence reported, 93,960 of them were sexual crimes. This figure is certain to increase from 2021 to 2022. There are five forms of crime, namely rape (4,845 cases), trafficking of women for sexual purposes (1,359 cases), sexual harassment (1,049 cases), sexual torture (672 cases) and sexual exploitation (342 cases) 15.

In Aceh Province itself, based on the results of documentation of cases of violence against women by the Aceh Monitoring Network (JPA) 231 16, over the last 4 years (2011-2014) it has assisted 1,100 cases, with details in 2011-2012 it assisted 561 cases (413 cases of violence in the domestic realm and 148 cases of violence in the public realm). Meanwhile, in 2013-2014 the number of cases assisted was 539 cases (356 cases of

14 https://www.dw.com/id/Hukum-perkosaan-di-berbagai-negara/g-19387722, Friday 27 July 2018 at 15.00
16 JPA 231 is a network formed in 2011 consisting of 12 organizations committed to documenting cases of violence against women and girls that occur in Aceh. The naming 231 is taken from Article 231 of Law no. 11 of 2006 concerning the Aceh Government which contains the government’s responsibilities, the Aceh government and the district/city government as well as the Acehnese population are obliged to promote and protect the rights of women and children as well as carry out dignified empowerment efforts.
violence in the domestic realm and 183 cases of violence in the public realm). Of the 769 domestic cases that occurred in Aceh during 2011-2014, 172 of them were sexual crimes that occurred in the household in the form of forced sexual intercourse. Among the 172 cases, 53 cases were sexual crimes in the form of incest committed by family members, whether biological fathers, stepfathers, uncles, grandfathers or older brothers. In the public domain, Sexual crimes remain the highest form of violence experienced by women. Of the 331 cases during 2011-2014, 275 of them were sexual crimes. The highest form of crime is rape at 72%. Data on sexual violence cases that occurred from 2016 to 2018 are:

   The high rate of violence against women is caused by various factors, including:  
   1. Low public legal awareness.

   This happens, because in general the enactment of a law often involves society at large. Limited public access and participation means that public engagement with the law may be low. Moreover, in drafting legislation, a theory is used which has become known as Fiction Theory, which emphasizes that everyone is considered to know about the existence of a legislative regulation, if it has been passed. This then results in very low public relations towards the law. Society is even in a position where they don't care or don't want to know. For example, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, many people do not know about it, even though its contents are important in the context of protection for women related to sexual and physical violence. In this law, families can be punished for physical and non-physical violence, including sexual violence.

   2. The law enforcement process is difficult for victims to access.

   This situation and condition occurs, driven by minimal and lack of knowledge about the legal process by the community. On the other hand, the legal process that occurs also displays conditions that cause justice to become a problem. The existence of the adage "sharp down, blunt up" is a description of the legal process itself. This condition makes it often difficult for victims to access the law themselves.

   3. Weak condition of victim service providers (P2TP2A)

   The condition of government service institutions (Integrated Service Center for the Empowerment of Women and Children/P2TP2A) in districts/cities is not all

running well. The main obstacle is the limited professional human resources working at P2TP2A, minimal budget and lack of facilities and infrastructure. P2TP2A in districts/cities is under the Women's Empowerment Service. Sometimes the affairs of Women's Empowerment and Child Protection in districts/cities do not stand alone but are combined with other departments, for example Family Planning and Community Empowerment: (1) Weak protection for victim witnesses, (2) Many women who are victims of violence give up their desire to do so, (3) low public awareness of social control to prevent violence against women, and (4) punishment that does not have a deterrent effect on the perpetrator,

Regulations regarding sexual crimes can be found in several laws and regulations in Indonesia such as the Criminal Code (hereinafter referred to as the Criminal Code), the Child Protection Law, the Elimination of Domestic Violence Law (hereinafter referred to as the PKDRT Law), The Pornography Law, the Health Law and the Law on the Eradication of the Crime of Human Trafficking (hereinafter referred to as the PTPPO Law). However, overall the law only briefly mentions the protection of victims of sexual crimes.

Regulations regarding sexual crimes, especially regarding rape and sexual harassment, are also regulated in the Aceh Province regional regulations called Aceh Qanun Number 6 of 2014 concerning Jinayat Law. Although in terms of definition, the scope of rape regulated in the Qanun is much broader than the definition of the criminal act of rape regulated in the Criminal Code, there are several provisions in the Qanun that have the potential to make women victims of rape victims again in their efforts to find justice.

4.2 PROTECTION OF WOMEN IN THE AMENDED 1945 CONSTITUTION

After the amendments to the 1945 Constitution, which have been carried out four (4) times, have brought changes to the Indonesian state administration. Through this amendment, a new spirit was born to realize Indonesia as a democratic country after more than 30 years of being in an authoritarian situation under the New Order regime. This new spirit is to make Indonesia a democratic rule of law country18.

The amendment to the 1945 Constitution encourages efforts to realize Indonesia as a welfare state which was previously explicitly mentioned in the Preamble to the 1945 Constitution. A welfare state is a logical demand and in accordance with the inevitable conditions of global development, and Indonesia is one of the countries declares itself as a democratic rule of law country, where welfare is one of the important goals.\textsuperscript{19}

Apart from that, the amendment to the 1945 Constitution also further emphasizes the state's responsibility for national and state life. The formulation of the fourth paragraph of the preamble to the 1945 Constitution explicitly emphasizes the main objectives and foundations of the Indonesian nation as a state, which include, among others; protecting the Indonesian people, realizing general welfare, making the nation's life intelligent and contributing to world order, and ultimately by realizing justice.\textsuperscript{20} To realize all of this, there are five basic values which then become the foundation, namely divinity, humanity, unity, deliberation and justice as well as becoming the moral and ethical foundation of the Indonesian people in carrying out national and state life. This is what Von Savigny later expressed as the Volkgeist (soul of the nation).\textsuperscript{21} This also needs to be explained, where these basic values also reflect the Indonesian state administration, including in its implementation, including in the formulation of policies such as criminal policy.\textsuperscript{22}

Specifically related to the protection of women victims of sexual violence, the 1945 Constitution after the amendment has strategic direction and steps. There are several fundamental and substantive changes that occurred as a result of changes to the 1945 Constitution, both in general and specifically for the protection of women victims of sexual violence. Fundamental changes that can be mentioned include; first, affirmation of Indonesia's goal as a country to realize prosperity and justice. This is written explicitly in the Preamble to the 1945 Constitution, Paragraph 4. This ensures and emphasizes that the goal to be achieved is prosperity as a form of affirming Indonesia's welfare state and then realizing justice for all Indonesian people without exception.

This then became an important foundation for Indonesia as a legal state which is explicitly regulated in Article 1 paragraph (3). As a democratic legal state, the aim of law refers to the opinion of Gustav Radbruch, that the aim is; justice (\textit{Gerechtigkeit}), certainty

\textsuperscript{19}Wasis Susetio, Welfare State Concept in Amendments to the 1945 Constitution; Its implementation in statutory regulations (Several Reviews from, Lex Jurnalica Vol.4 No.2, April 2007
\textsuperscript{20}Kaelan, (2013), Pancasila National State, Paradigma, Yogyakarta, p. 74
\textsuperscript{21}Jhon Gilsen and Frits Gorle, (2005), Legal History An Introduction, Refika Aditama, Bandung, p. 15
\textsuperscript{22}Kaelan, Op. Cit, p. 207
(Rechtssicherheit) and expediency (Zweckmassigkeit) as written in his book entitled: "einführung in die rechtswissenschaften"²³. The general principle of justice in law according to HLA Hart is about equality and inequality. Plato himself provides qualifications for the meaning of justice, namely; are characteristics and traits that naturally exist within humans, organize and control and are part of human nature. In other words, Plato wants to say that justice is an inseparable part of humans. Justice is a nature that exists in humans, it just depends on how humans organize and manage it so that it becomes part of the important and main characteristics of humans themselves which is then called nature.²⁴

The concept of state protection which is represented through the goals of the Indonesian state is explained later in the amendment articles which did not exist before the amendment. The presence of state institutions such as presidential candidates who are Indonesian citizens is regulated in article 6, where before the change it was stated that presidential and vice presidential candidates were native Indonesians. It is clear that this change ensures that equality occurs, in other words, anyone as long as they are Indonesian citizens can become a presidential candidate, including women. The principle of equality regardless of religious background, race, ethnicity, language and including biologically, men and women have the same opportunity to become candidates for president and vice president. Furthermore, Article 18, regional and legislative elections also represent justice as stipulated in Article 6.

Furthermore, Article 24 (1) where judicial power is independent power to uphold law and justice. The principle of justice in judicial power was explicitly emphasized in the amendments to the 1945 Constitution. Then, to ensure that justice was carried out correctly, the presence of institutions such as the Judicial Commission (KY) article 24B and the Constitutional Court 24 C, after the amendment showed a firm commitment to Indonesia's efforts to realize justice. Likewise, article 27 paragraph (1), which states that every citizen has the same status under the law and all parties are obliged to uphold the law, is in line with the goals of justice, where the principle of equality is of urgency.

With the changes to various articles in the justice framework promoted by the 1945 Constitution after the amendment, it is emphasized that the state will not tolerate and will

²³Mario Julyano and Aditya Yuli Sulistyawan, Understanding Legal Certainty Through the Construction of Legal Positivism reasoning, Crepido Journal, Volume 01, Number 01, July 2019, pages 13-22
not take sides with injustice. The aim is to achieve justice, and thus women who are victims of sexual violence refer to the amendments to the 1945 Constitution such as the articles above, emphasizing the state's obligation to achieve justice. Women who are victims of sexual violence must get justice for the situations and conditions they experience. The state must take the lead in ensuring that victims receive protection and justice, including the state's responsibility to ensure that victims can undergo the legal process in accordance with the principles of justice. The state must not take the position of "always right and cannot be wrong", which is a position that is contrary to the 1945 Constitution. The substantive position of the state is to ensure justice where the principle of equality is important to ensure that women victims of sexual violence obtain their rights. For this reason, the state must also ensure that it remains consistent in implementing the 1945 Constitution after the amendment.

Second, strict protection of citizens. Amendments to the 1945 Constitution also substantively encourage the provision of protection for women, especially those who are victims of sexual violence. The protection built refers to the principle of respect for all people, including women's rights, preventing sexual violence from occurring and applying the law to obtain justice for women who are victims of sexual violence.

These various principles are explained in various articles, especially among others; article 28 which explicitly emphasizes the freedom to express opinions, associate and assemble. This article clearly emphasizes the freedom of every person to think, express opinions, gather or organize without fear of intimidation, pressure, discrimination or other actions. The state guarantees protection for the people to think critically and gather within the framework of its independence.

Then, articles 28A-28J concerning Human Rights are an important regulation in the 1945 Constitution which then brings the consequences that the state has responsibilities, obligations and supports their implementation in the life of the nation and state. The existing articles specifically regulate the basic rights of every person. The right to life has the consequence that the state recognizes, guarantees and realizes it, including that the state has no position to take away, let alone terminate a person's right to life. This article ensures that women who are victims of sexual violence have the right to receive protection by the state without exception.

The next article, is article 28B which guarantees every person, especially women, to form a family and marriage that is far from discrimination, violence or intimidation,
the State guarantees and is obliged to follow up. Allowing violence to occur in the formation of families and marriages, especially those experienced by women, is a clear violation of the constitution, and the state must not allow it. Then article 28D, where the state must ensure that there are guarantees, protection and fair legal certainty, there must be no favoritism, let alone allowing it.

Then article 28G, where every person, including women victims of sexual violence, has the right to feel safe, protected and free from fear, free from torture or treatment that degrades human dignity. There are various cases where women who are victims of sexual violence feel unsafe, receive threats, let alone suffer torture and have their dignity degraded, are situations that constitute a violation of the constitution. The 1945 Constitution clearly explicitly prohibits this from happening, and the state has an obligation to prevent it from happening. Unfortunately, the current reality of national law, referring to various cases of sexual violence experienced by women, clearly does not refer to this article, even though the 1945 Constitution should be an important guideline in national law, especially criminal law. In article 28I, regulating that every person, including women, has the right not to be tortured, not to be enslaved, to be free from situations and acts of discrimination, is a very important right to obtain, and the state must make it happen. The existence of national law that ensures that these various rights are realized is a state obligation without exception.

Then article 34 paragraph (3), where the state has the responsibility and obligation to provide adequate health service facilities and public services, is a mandate that must be realized. These facilities must realize equality and justice, where everyone has the right to access these various facilities without discrimination, fear or intimidation. This article requires the state to provide and build access and space in accordance with articles 28, 28A-28J without exception. Referring to cases of women victims of sexual violence, there are still many cases where the service facilities accessed by women do not reflect justice, there is intimidation and discrimination, they are inadequate and various other problems.

The existence of various regulations such as those in articles 28, 28A-28I, and article 34 paragraph (3) are very fundamental changes to the post-reform 1945 Constitution amendment process. This shows and demonstrates Indonesia's commitment and firmness as a country to create a democratic Indonesia, where one of the goals is to protect its citizens. The State and Government have an obligation without exception to make this happen, because the 1945 Constitution is a basic norm that must be followed.
and is a guideline in the Indonesian legal system, including in laws that ensure the protection of women who are victims of sexual violence. National laws should not conflict with these articles, if this happens, then the state is clearly committing a violation of the constitution.

According to KC Where, the constitution or UUD can be viewed from two important aspects, namely law and morals. In the legal aspect, the constitution or UUD has the highest degree (supremacy), because it was created by a law-making body or institution. Formed or compiled in the name of the people, its power is guaranteed by the people and the people must implement it. So the constitution has binding power on the people or society, the authorities and the bodies that have and exercise power. Then, from a legal perspective, it is prepared by an institution or body whose legitimacy is recognized. Furthermore, from a moral aspect, the constitution or UUD must not conflict with the universal values of moral ethics that have been mutually agreed upon.

Furthermore, Hans Kelsen in Grundnorm Theory, UUD is the actualization of basic norms, namely the highest norms in a norm system. As a basic norm, the foundation and way of thinking must refer to and be guided by this basic norm, in this case the 1945 Constitution. Referring to this theory, the 1945 Constitution should be the basic norm in criminal law, especially regarding sexual violence experienced by women. Consequently, the provisions of the previously mentioned articles in the 1945 Constitution, such as articles 28, 28A-28I and article 34 paragraph (3), must be used as references in various regulations in national law such as the Criminal Code, Criminal Procedure Code and national law, especially in handling women victims. sexual violence. This theory emphasizes that the basis of a norm is in a higher norm. In other words.

Referring to this theory, the national criminal law, especially in handling cases of women victims of sexual violence, should refer to the legal norms that have been regulated in the 1945 Constitution based on various articles that have been described previously.

According to Janpatar Simamora In a legal state that refers to the concept of rechtsstaat, there are four conditions that must be met, including; First, national and state...
life must be in line with the constitution or UUD, including in the drafting of laws under it. There are two meanings to this condition, namely that all government and state activities must be based on the constitution or UUD. Second, the process of forming laws must go through parliament. The second condition is that the state regulates an accountability mechanism for every policy and action carried out by the state. The reference is the highest norm, namely the UUD or constitution. Third, guarantee of judicial independence and fourth, the state protects human rights.

Jimly Asshiddiqie, said that the constitution or UUD is the basic law that is used as a guideline in the implementation or administration of a country. The Constitution is a higher law or even the highest and most fundamental in nature as well as being a source of legitimacy28

On that basis, the formation of national law, including criminal law related to efforts to protect women who are victims of sexual violence, must be sourced from the 1945 Constitution. Thus, it would be said that the national legal system in force in Indonesia covers all legal elements such as content, structure, culture, facilities, regulations and legislation, all of which are connected to each other must be sourced from the preamble and articles of the 1945 Constitution29.

Based on the various descriptions mentioned above, the protection of women victims of sexual violence in national criminal law should be in line with the spirit and regulations of the 1945 Constitution, especially the various articles that have been explained previously.

For this reason, the spirit of synchronization and harmonization in national criminal law related to the protection of women victims of sexual violence is urgently implemented by the Indonesian Government referring to the 1945 Constitution after the amendment. Moreover, the 1945 Constitution also accommodates the substance and regulations of various conventions, covenants and protocols related to the protection of women, which have previously been ratified by the Indonesian Government.

5 CONCLUSION

Amendments to the 1945 Constitution have brought strategic changes to Indonesia's state administration. These changes are; reaffirmation of Indonesia as a country whose aim is to realize prosperity and justice within the framework of a democratic rule of law. Then, the state affirms its presence to protect its citizens both from the perspective of the rule of law, human rights that are free from discrimination and violence. This change clearly makes a strategic contribution to strengthening the protection of women victims of sexual violence.

In this context, so that these changes can be implemented and implemented strategically, it is necessary to build a synchronization and harmonization process between the 1945 Constitution and national criminal law, especially those related to the protection of women victims of sexual violence. This needs to be done, considering that the current national criminal law related to the protection of women victims of sexual violence is not yet in line with the changes to the 1945 Constitution. For this reason, synchronization and harmonization need to be carried out in the national criminal law specifically for the protection of women victims of sexual violence.
REFERENCES

Amiruddin and Zainal Asikin, (2004), Introduction to Legal Research Methods, Kencana, Jakarta.


https://www.dw.com/id/Hukum-perkosaan-di-berbagai-negara/g-19387722, accessed on 07 July 2023, at 12.07 WIB

https://www.dw.com/id/Hukum-perkosaan-di-berbagai-negara/g-19387722, Friday 27 July 2018 at 15.00


Jhon Gilsen and Frits Gorle, (2005), Legal History An Introduction, Refika Aditama, Bandung.


Mario Julyano and Aditya Yuli Sulistyawan, Understanding Legal Certainty Through the Construction of Legal Positivism reasoning, Crepido Journal, Volume 01, Number 01, July 2019.


UN General Assembly Resolution Number 48/104 (Resolution adopted by the General Assembly 48/104), Declaration on the Elimination of Violence against Women, 20 December 1993


Soerjono Soekanto & Sri Mamudji, (2001), Normative Legal Research, A Brief Overview, Rajawali Pers, Jakarta

Wasis Susetio, Welfare State Concept in Amendments to the 1945 Constitution; Its implementation in statutory regulations (Several Reviews from, Lex Jurnalica Vol. 4 No. 2, April 2007