

## FULFILLMENT OF THE PRINCIPLES OF GENDER EQUALITY IN LEGAL PROCEEDINGS INVOLVING WOMAN AT THE MAJENE DISTRICT COURT

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### ABSTRACT

The settlement of cases involving women facing the law must adhere to the principle of gender equality. The research method employed in this study is juridical-empirical research, which examines the attitudes of judges in examining women (victims) at the Majene District Court and the legal considerations of judges in their decisions as an implementation of Supreme Court Regulation Number 3 of 2017 on Guidelines on Trying Cases of Women Faced with the Law. This study aims to enhance the provision of legal protection for women involved in legal disputes and to establish a judicial process with a gender perspective. The findings indicate that judges have not provided adequate protection to victims through restitution, compensation, or rehabilitation. Therefore, the protection of women (victims) involved in legal disputes has not been fully fulfilled.

**Keywords:** *gender equality, legal protection, women in conflict with the law*

### INTRODUCTION

Protection for women who are in certain conditions of conflict with the law or as witnesses and victims in court proceedings aligns with Indonesia's aspirations outlined in the Sustainable Development Goals (SDGs). Achieving gender equality is one of the SDGs' goals, which includes twelve key objectives, one of which is the reinforcement of gender equality in applying the law. Court decisions announced by judges are expected to have undergone a judicial process that ensures protection for women.

The state guarantees every citizen the right to legal protection and certainty and to obtain equal legal status as mandated in Article 28D, paragraph (1) of the 1945 Constitution. Both national and international instruments obligate the state to ensure legal protection for its citizens, particularly women in conflict with the law, through a gender-responsive juridical application. This means that women must be given access to justice, without discrimination in judicial processes, without negative labeling, and with equality before the law.

In reality, significant disparities still exist between women and men. The subordination and marginalization of women often place them in vulnerable positions, resulting in them being victims, sometimes fatally, and possibly becoming perpetrators of criminal acts. There exists an imbalance of power relations that causes women to be second-class citizens and considered weak, often being subjected to sexual exploitation solely to satisfy men's desires (Elimina and Martha Aroma, 2003).

Such phenomena often infiltrate the judicial process when women are involved in legal proceedings. Misperceptions by law enforcement officers, including investigators, prosecutors, and judges, result in injustices for women undergoing trials. The negative labeling attached to women leads to discrimination and injustice within the judicial process.

In practice, the issues women face when dealing with the law include being victims of violence—physical, psychological, or sexual—where they are often blamed for the crimes committed against them. For instance, a woman's manner of dress might be interpreted as provoking the crime. Women as victims are also perceived as having desired the criminal act because they did not resist or remained silent, thus appearing to allow the crime to occur. This phenomenon is known as victim blaming, where the victim is blamed for the crime that happened to her. Furthermore, it is often observed that during legal proceedings, women in conflict with the law, whether as witnesses or victims of crime, do not receive legal assistance.

Victim blaming is a common occurrence in trials, where women victims of crime are frequently held responsible by the judge for the criminal acts. The victims are considered to have caused the criminal behavior, and their response during or after the crime is interpreted as permitting it to occur. Court examinations often overlook the psychological condition of women as victims of crime, failing to consider the impact on their mental state.

Indonesia has implemented the Convention on the Elimination of All Forms of Discrimination Against Women through a ratification process. Therefore, Indonesia is responsible for ensuring protection for women within a fair judicial system. The clear provision of protection for women engaged in legal proceedings is articulated in Supreme Court Regulation No. 3/2017 on Guidelines on Trying Cases of Women Faced with the Law. Discrimination and negative labeling against women within the judicial system significantly impact the fulfillment of their rights to protection and justice.

Supreme Court Regulation No. 3/2017 mandates that the settlement of cases involving women should adhere to several principles, including the respect for human dignity, non-discrimination, gender equality, equality before the law, justice, legal certainty,

and the usefulness of law. The purpose of this regulation is to provide judges with guidance to understand and implement these principles as a form of protection, avoiding discrimination based on gender or stereotyping in their decisions. This regulation is directed at all parties involved in the judicial process, particularly the judges.

The regulation requires judges to conduct trials by applying principles of non-discrimination, justice, and gender equality. The effectiveness of these principles in court proceedings heavily depends on the mental quality and personality of those involved, especially the judges. Judges are obliged to uphold justice in court as mandated by Supreme Court Regulation No. 3/2017, ensuring that the judicial process is conducted impartially and free from gender discrimination.

Based on the points above, the author believes that a study is necessary to provide answers to the public regarding the application of gender equality principles for women facing legal proceedings in the Majene District Court.

## **METHODS**

This study employs a qualitative research method with a juridical-empirical approach, examining both the applicable legal provisions and societal realities. The researchers attempt to analyze the implementation of gender equality in Supreme Court Regulation No. 3 of 2017 in the trial process of women facing legal proceedings in the Majene District Court. This study uses primary data from structured interviews conducted with the judges at the Majene District Court. Additionally, secondary data includes the verdict Number xx/Pid.Sus/20xx/Pn.Mjn.

## **RESULT AND DISCUSSION**

### **The Existence of Supreme Court Regulation No. 3 of 2017 on Guidelines on Trying Cases of Women at the Majene District Court**

One of the objectives of issuing Supreme Court Regulation No. 3 of 2017 is to serve as a guideline for judges in conducting judicial proceedings, particularly those involving women. Through this regulation, judges are expected to conduct trials by applying the principles of non-discrimination, gender equality, and eliminating gender stereotypes, thereby providing protection for women facing legal proceedings (Rizky Faturrahman et al., 2021).

In the trial process, judges must be able to identify facts related to gender inequality, which can result in gender injustice between women and men, especially when women are

victims of criminal acts. Over the past three years (2020-2022), the Majene District Court has examined and adjudicated four cases involving women facing legal proceedings. These cases include theft, fraud, narcotics offenses, and sexual violence. Verdict Number xx/Pid.Sus/20xx/Pn.Mjn is one of the cases decided by the Majene District Court involving sexual violence, where the victim was an adult woman.

In this study, an interview was conducted with one of the judges at the Majene District Court, Mr. Rasalhaque Ramadan Putra, S.H. M.H. According to him, the judges at the Majene District Court have warmly welcomed Supreme Court Regulation No. 3 of 2017. This regulation serves as a guideline for judges in conducting trials involving women facing legal issues. The interview results are as follows:

*“Yes, we warmly welcome this regulation. We use it as a guideline for our panel of judges when examining cases involving women, whether they are victims, witnesses, or perpetrators. Since the issuance of this regulation, we have applied all the provisions contained within it.”*

*(Interview with Majene District Court Judge, September 5, 2023)*

The provisions related to the judge's conduct in court under Supreme Court Regulation No. 5 of 2017 stipulate that judges, when examining court cases, must not display demeaning attitudes or make statements that blame the victim (victim blaming). Furthermore, judges are required to unravel the trial facts to avoid discriminating against women based on cultural norms, customary practices, or any perceived gender biases (Supreme Court Regulation, 2017).

Judge Rasalhaque Ramadan Putra, S.H. M.H, explained the process of examining women (victims) at the Majene District Court:

*“When we, as judges, examine women, especially those who are victims of sexual violence, we always strive to use language that does not blame the victim, considering that these cases often occur over a long period of time and the perpetrator is usually the victim's biological father. Naturally, as judges, we attempt to gather information from the victim's perspective without causing further trauma to the woman (victim).”*

*(Interview with Majene District Court Judge, September 5, 2023)*

Further elaborating on Supreme Court Regulation No. 3 of 2017, judges are discouraged from using a victim's sexual experience as a reason to reduce the perpetrator's sentence during trial proceedings. Additionally, judges are prohibited from using negative labeling (gender stereotypes) against women, which could lead to women who testify in court being unfairly blamed for the perpetrator's actions.

The trial process in court follows the provisions of the Criminal Procedure Code, which includes: 1) reading of the indictment attended by the Defendant and the Victim, 2) Exceptions, 3) Evidence presentation, 4) Prosecution's reading of charges, 5) Defense plea (Pledoi), 6) Rebuttal, 7) Sur-Rebuttal, 8) Deliberation by the judges and reading of the verdict. However, during interviews conducted by researchers with a judge at the Majene District Court, it was explained:

"In the examination of cases of sexual violence, the Defendant is not accompanied by Legal Counsel, hence there is no agenda for exceptions (Eksepsi) and the rebuttal-rejoinder (Replik/Duplik). Similarly, for the victim (woman), who is already an adult and therefore not accompanied by a guardian."

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*(Interview with Majene District Court Judge)*

In the examination process of women against the law at the Majene District Court, the provisions stipulated in Supreme Court Regulation No. 3 of 2017 have been applied. According to these provisions, in every trial involving women, whether as witnesses, victims, or perpetrators of crimes, the panel of judges is required to treat women in court with gender equality and without discrimination.

Furthermore, Judge Rasalhaque Ramadan Putra, S.H. M.H, also stated:

*"This regulation (PERMA) is very positive. Before this regulation from the Supreme Court, the concepts of justice and equality were mandatory and had to be implemented. With the existence of this regulation, it reaffirms and clarifies that equality and justice must be upheld, especially for women facing legal issues."*

*(Interview with Majene District Court Judge)*

From the statement of Judge Rasalhaque Ramadan Putra, S.H. M.H, who represents the judges at the Majene District Court, it is evident that the judges at the Majene District Court fully support all the provisions stipulated in Supreme Court Regulation No. 3 of 2017 on Guidelines on Trying Cases of Women Faced with the Law. The presence of Supreme Court Regulation No. 3 of 2017 serves as a guideline for judges in making decisions and rulings on cases involving women facing legal proceedings.

### **Legal Considerations in Verdict Number xx/Pid.Sus/20xx/Pn.Mjn**

#### **a. Power Imbalance Aspect Resulting in Victim Powerlessness**

The existence of Supreme Court Regulation No. 3 of 2017 on Guidelines on Trying Cases of Women Faced with the Law undoubtedly serves as a guideline for judges in the examination of women in court proceedings. The judge considers the facts found during the trial as legal considerations in deciding a case, mainly cases involving women in conflict with the law. With authority to examine court cases, judges must be capable of identifying and uncovering facts related to the unbalanced relationship between the perpetrator and the victim, thereby establishing the victim's powerlessness as a basis for aggravating the perpetrator's punishment.

**“Considering that historically, the victim witness has consistently denied each time the Defendant would rape the victim witness, but the victim witness is always threatened to be hit, and the defendant says, ‘Rather than others who rape you, it is better that I do,’ and what was felt when the Defendant raped the victim witness is only the victim witness was afraid”**

The statement above is a judge's consideration quoted in a verdict that reflects that the judge has identified the victim's powerlessness in the occurrence of sexual violence; the judge has made this a reason for the offender to be given a maximum sentence. That is because of an imbalanced power relationship that causes sexual violence to the victim's own child, even repeatedly over a long period, causing the victim to become pregnant until she gave birth.

The response given by the judge aligns with the mandate in Supreme Court Regulation Number 3 of 2017, which confirms that the Judge, in giving legal consideration to the verdict, is expected to include the value of gender equality and non-discrimination, namely by identifying the facts of the trial as stated in Article 4 of Supreme Court Regulation Number 3 of 2017: 1) Social differences between the perpetrator and the victim, 2) Lack of legal protection for the victim, 3) Physical and psychological helplessness of the victim, 4) An imbalanced relationship resulting in the victim being powerless, and the experience of violence committed by the perpetrator.

In delivering a verdict concerning cases involving women in conflict with the law (victims) under Article 6 of Supreme Court Regulation No. 3 of 2017:

- 1) The judge must consider the value of gender equality and gender labeling in statutory regulations and unwritten law.
- 2) The judge is required to interpret statutory regulations and/or unwritten laws that ensure gender equality.
- 3) Exploring the legal values of local wisdom and a living sense of justice.

Further, in Verdict Number xx/Pid.Sus/20xx/Pn.Mjn, the panel of judges examining this case cited the father-daughter relationship as an aggravating factor.

*In imposing a sentence on the Defendant, it is necessary first to consider the aggravating and mitigating circumstances;*

***Aggravating circumstances:***

- *The Defendant, as the biological father, has demeaned the dignity and honor of the victim witness both as a child and as a woman.*
- *The Defendant was evasive and not straightforward in providing testimony.*
- *The victim witness became pregnant and gave birth to a child as a result of the Defendant's sexual intercourse.*

***Mitigating circumstances:***

- *There are no mitigating circumstances.*

The panel of judges appropriately included aggravating factors because of the Defendant's status as the biological father, which demeaned the dignity and honor of the victim both as a child and as a woman. This judicial consideration indicates the judge's favor

towards the victim, particularly women who are victims of sexual violence. The panel of judges also cited the victim's pregnancy as an aggravating circumstance. This demonstrates that the judge in the verdict has examined the impacts that the victim will face as a result of the sexual violence experienced.

#### **b. Psychological Condition of the Victim**

The psychological condition of the victim is highly significant for judges to consider when adjudicating cases in court. The victim's psychological state resulting from the perpetrator's criminal acts is substantiated either by a psychological examination report or through direct expert testimony presented during the trial.

In Verdict Number xx/Pid.Sus/20xx/Pn.Mjn, the panel of judges, provided an opportunity for the public prosecutor to present documentary evidence in the form of the victim's psychological examination results.

*During the trial, the Public Prosecutor submitted documentary evidence included in the case file as follows:*

- *Birth Certificate No: 193/PMB.WHY/XI/2021 dated November 21, 2021, stating that on Sunday, November 21, 2021, at 09:28 AM, a female baby was born at the PMB Midwife's House, from the parents of Mrs. Witness Victim;*
- ***Psychological Medical Record Report*** No: 045/244/2021, where the expert stated that due to the Defendant's actions, the witness victim experienced profound trauma resulting from the sexual violence she endured, namely feeling ashamed, having a negative self-image, and experiencing an Elektra complex or not realizing her psychological condition excessively loving her father in a sexual context;

Subsequently, during the trial, the panel of judges also heard the testimony of a psychological expert who had conducted an examination on the woman (victim).

*The Public Prosecutor has presented the following Expert:*

##### **1. The Expert, under oath, generally explained:**

- *That the expert's current competence involves intervention, behavioral change, and counseling for survivors as part of psychological science governed by the Indonesian Psychological Code of Ethics Article 1, paragraph 4;*



- *That the expert has previously been examined as an expert by the Indonesian National Police at the Polres Polman Polda Sulbar in cases of criminal rape and molestation of minors;*
- *That Elektra Complex is a term for a psychological condition where a female child develops an excessive attraction towards her father sexually, contrasting with the Oedipus Complex where male children develop an excessive sexual attraction towards their mothers;*
- *That the victim or subject experienced profound trauma due to the sexual violence endured, including feelings of shame, a negative self-image, and experiencing Elektra Complex, where the victim or subject is unaware of their psychological condition of excessive love towards their father in a sexual context.*

To strengthen the data obtained from the verdict, the researchers conducted an examination of the decision, with one of the examiners being a psychologist named Mimit Pakasi, S.Psi., M.Si. He stated that in term of the female victim of sexual violence in the case of Verdict Number xx/Pid.Sus/20xx/Pn.Mjn, within the field of psychology, there exists a psychological condition in adolescent girls that manifests as an attraction towards the opposite sex. However, according to the expert, such a condition cannot justify the actions of the perpetrator, who incidentally is the victim's biological father and has repeatedly committed sexual violence against her, resulting in pregnancy and causing profound trauma to the victim. Mr. Mimit Pakasi, who also served as an expert witness in the trial, provided an analysis of the verdict, highlighting that the judge prioritized the psychological state of the victim and cited it as a reason for aggravating the punishment imposed on the perpetrator.

**c. The aspect of the losses suffered by the victim and compensation/restitution**

One form of legal protection for victims of criminal acts is the provision of restitution, which imposes an obligation on the perpetrator or the perpetrator's family to compensate the victim. According to Article 4 of Supreme Court Regulation, the forms of restitution provided to victims of criminal acts may include 1) financial losses; 2) both material and immaterial damages resulting from the criminal act; 3) costs incurred for medical examinations at hospitals; 4) other losses experienced by victims of criminal acts, including accommodation, legal services, or other expenses related to the victim (Chief Justice and Supreme Court of the Republic, 2022).

In addition to restitution, the legislation also provides another form of compensation available to victims, known as compensation. There are distinctions between restitution and compensation, including 1) compensation is referred to as damages awarded by the state to

the victim. Compensation does not require the imposition of punishment on the perpetrator of the crime. 2) Restitution, on the other hand, is directly provided by the perpetrator to the victim as stipulated in a court judgment (Maria, 2021).

Another provision stated in Article 8 of Supreme Court Regulation No. 3 Year 2017 includes the following: 1) Judges are required to confirm with the victim regarding the losses suffered, the impact of the case, and the need for recovery. 2) Judges are obligated to inform the victim about their rights to consolidate cases according to Article 98 of the Indonesian Criminal Procedure Code (KUHAP), and/or file regular lawsuits or restitution requests as regulated under the provisions of the legislation (K Faridah, 2020).

The researchers did not find any mention of the provision of restitution to the victim in the excerpt of the verdict provided by the judge at the Majene District Court. The excerpt of the verdict reads as follows:

### ***JUDGING***

1. *Declaring the Defendant mentioned above proven legally and convincingly guilty of committing the crime of sexual violence within the household as per the first primary indictment by the Prosecutor;*
2. *Sentencing the Defendant accordingly to 10 (ten) years of imprisonment;*
3. *Deciding that the period of detention undergone by the Defendant shall be fully deducted from the imposed sentence;*
4. *Deciding that the Defendant shall remain in custody;*
5. *Deciding on the evidence in the form of:*
  - *1 (one) green Marriage Booklet under the name of the DEFENDANT with serial number 273/18/XI/1997, dated November 10, 1997;*
  - *1 (one) brown Marriage Booklet under the name of WITNESS II with serial number 273/18/XI/1997, dated November 10, 1997;*

In the excerpt from verdict Number xx/Pid.Sus/20xx/Pn.Mjn, it is noted that the panel of judges adjudicating the case above did not include restitution as a form of compensation provided to the victim. This omission represents a deficiency in the verdict as it fails to grant one of the rights to the victim in the form of restitution. Granting restitution is a legal protection right that should be afforded to victims.

As stated by Judge Rasalhaque Ramadan Putra, S.H., M.H.:

*“Our panel of judges at the Majene District Court has not yet fully implemented the provision of restitution, especially in cases of sexual violence in Verdict Number xx/Pid.Sus/20xx/Pn.Mjn. It was not included in the considerations of the verdict because the victims themselves were not aware of their right to restitution, hence they did not file a claim for compensation.”*

This statement underscores the judicial acknowledgment of the shortfall in ensuring victims receive complete legal protection, particularly concerning their right to restitution.

In the criminal justice system in Indonesia, the protection of victims of criminal acts is also prioritized by judges in the trial proceedings, alongside the focus on penalizing the perpetrators. Forms of protection may include restitution or compensation for victims based on prevailing legislative provisions.

## CONCLUSION

Based on the research conducted, the researchers conclude that in the examination process of women in conflict with the laws at the Majene District Court has met the standards set by Supreme Court Regulation No. 3 of 2017. In every case involving women in legal proceedings, the panel of judges applies principles that are in line, starting from the treatment of women in court, gender equality, and emphasizing justice, utility, and legal certainty without discrimination. There are several aspects that judges must consider in their rulings as forms of legal protection provided to victims, including the aspect of power relations that render the victim powerless, the psychological condition of the victim, and the aspect of restitution as compensation to the victim. However, the restitution to the victim has not been accommodated in verdict Number xx/Pid.Sus/20xx/Pn.Mjn. Therefore, the researchers assess that the judges in delivering verdict Number xx/Pid.Sus/20xx/Pn.Mjn have not maximally provided legal protection to the victim following the provisions stipulated in Supreme Court Regulation No. 3 of 2017 on Guidelines on Trying Cases of Women Faced with the Law.

## Suggestions

1. To ensure that judges at the Majene District Court provide teleconference facilities for women (victims) who are to be examined in court when the victim is not mentally prepared to face the perpetrator in person during the trial.

2. To prioritize the provision of restitution as a form of compensation to victims, predominantly female victims of sexual violence, by the panel of judges at the District Court.

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