A JURIDICAL ANALYSIS OF REGULATIONS AND POLEMICS IN A REGULATION CONCERNING HIGHER EDUCATION’S SEXUAL HARASSMENT

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Abstract
This research aims to analyze the rule of law and polemics in Permendikbudristek No. 30 of 2021 on Prevention and Handling of Sexual Violence in the College Environment. So, this study examined the first, how is the urgency of the issuance of Permendikbudristek No. 30 of 2021 on Handling Sexual Violence? Second, What are the arrangements and polemics in Permendikbudristek No. 30 of 2021? This research uses normative juridical research methods and is qualitative. From the results of the study, it can be concluded that the establishment of regulations on the prevention of handling sexual violence in a college environment is very important given the high number of sexual harassments. Permendikbudristek 30/2021 regulates the prevention of sexual violence from learning, strengthening governance and culture & regulates the handling of sexual violence from mentoring to the recovery of victims. There are several polemics that arise from this rule. However, existing rejections and polemics tend to be based on a misguided understanding of context as straightened out in this study. It is expected that Permendikbudristek Number 30 of 2021 can be earnestly applied by universities throughout Indonesia and in its implementation needs supervision from the relevant ministries.

Keywords: Sexual harassment, higher education, Permendikbudristek 30/2021

INTRODUCTION
The survey from Lentera Sintas Indonesia and Magdalene.co through Change.org stated that 93% of people who have experienced sexual violence do not report to law enforcement authorities. Campus is a place to study inseparable from the threat of sexual violence. Confessions from survivors quoted from the Tirto.id news portal stated that the perpetrators of sexual violence were committed by various individuals on campus, ranging from lecturers, fellow students, campus staff, professors, residents at the KKN location, even campus doctors (Adiyanto, 2020).

Sexual violence can occur due to inequality of power relations, gender relations and rape culture (Soejoeti & Susanti, 2020). The problem of sexual harassment is something that is not easily revealed but many experience, not least in the campus environment. Sexual violence can occur due to abuse of power that positions the perpetrator in a higher power relationship until it is felt to be in control with his superior position (Suyanto, 2013).

The handling of sexual assault cases on campus is quite complex, not only related to the rules of sexual violence prevention and countermeasure mechanisms, but also with bureaucratic systems and the quality of human resources. Conducive bureaucracy will support the creation of a gender-friendly and non-sexually violent campus environment, while a complicated and convoluted bureaucracy will lead to the abandonment of victims of sexual violence in the name of good campus (Nikmatullah, 2020). As a form of seriousness handling sexual violence in the government village through the Minister of Education recently issued the Regulation of the Minister of Education, Culture, Research and Technology
(Permendikbudristek) Number 30 of 2021 on Prevention and Handling of Sexual Violence (PPKS). But until now the regulation is still a debate that reaps the pros and cons of various parties. Although reaping the pros and cons of the regulation is expected to provide certainty to the handling of sexual violence cases in the village.

Based on the above explanation, the author is interested in discussing in the study with the title "A Juridical Analysis of Regulations and Polemics in a Regulation Concerning Higher Education’s Sexual Harassment " with the first problem is the urgency of the issuance of Permendikbudristek No. 30 of 2021 on Handling Sexual Violence, and secondly, the arrangements and polemics in Permendikbudristek No. 30 of 2021.

METHOD

The research method that the author uses in compiling this paper is Normative Juridical Research as the author mentioned above. Normative Juridical Research Method is a literature law study conducted by examining library materials or mere secondary data (Sunggono, 2003). Also, the author uses the Method of Deductive Thinking, which is a way of thinking used when drawing a conclusion from something that is general and has been proven to be true and then the conclusion is intended for something special (Sedarmayanti & Hidayat, 2002).

Because of the things that the author has explained above, thus the object analyzed with qualitative research is a research method that refers to legal norms and provisions contained in the Laws and Regulations (Soekanto & Mahmudhi, 2003).

RESULTS AND DISCUSSION

Urgency Issued Permendikbudristek No. 30 of 2021 Concerning the Prevention and Handling of Sexual Violence in the College Environment

Today it is undeniable, the evil of decency is increasingly and diverse, humans sometimes fail to prevent themselves from deviative and evil tendencies due to the interests of biological demands, prestige competition, status and self-esteem (Ethan & Hartanto, 2021). Women’s sexuality is vulnerable to discriminatory treatment and violence is almost unbelievable that the perpetrator of violence is the closest person, this harassment of women is highest in the personal sphere. This means that the perpetrator is a person who has a blood relationship (Father, grandfather, sister, uncle, grandfather), kinship, marriage (husband) and intimate relationship (Courtship) with the victim (National Commission for Women, 2020).

In addition to the family or relatives as outlined above, sexual violence can also occur in academic environments, based on an independent survey by the Ministry of Education and Technology in 2020 which in this case was delivered by Nadim Makarim recorded as many as 77% of lecturers admitted that non-sexual violence occurred on campus. Of these 77%, only 63% chose not to report criminal acts of sexual violence, this is due to concerns about negative assumptions from the public that will be pinned on the victim (CNN Indonesia, 2021).

The majority of victims of sexual violence are women. Permendikbudristek Number 30 of 2021 is a step forward. The birth of Permendikbudristek No. 30 of 2021 is expected to realize the fight against sexual violence with an institutional and sustainable approach and provide legal certainty for college leaders to take decisive steps against sexual violence cases that occur in the campus environment. The Coalition of Civil Society Against Sexual Violence (KOMPAKS) assesses Permendikbudristek No. 30 of 2021 to fill the legal void in the
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prevention, handling, and protection of victims of sexual violence that prioritizes needs and justice for victims.

Cases of sexual violence and harassment on campus have not been revealed because of the strong power of attorney relations of the perpetrators and the absence of a legal umbrella. Komnas Perempuan data throughout 2015-2020 shows, of the overall sexual violence complaints originating from educational institutions, as many as 27 percent of cases occurred in universities. This data is reinforced by a Survey of the Coalition of Safe Public Spaces in 2019 which showed school and campus environments ranked third in the location of sexual violence (15%) below the streets (33 percent) and public transportation (19 percent) (Tempo, 2021).

Minister of Education, Culture, Research, and Technology (Mendikbudristek) Nadiem Makarim officially authorized Permendikbudristek No. 30 of 2021 on Prevention and Handling of Sexual Violence in Higher Education Environment (Permendikbudristek Number 30 of 2021). The regulation received public support because it answered public unrest related to the rampant practice of sexual violence, especially in the scope of universities. On the other hand, rejection also comes because it considers the existence of Permendikbudristek precisely as if legalizing sexual relations outside the institution of marriage or adultery (Center for Law and Policy Studies, 2021).

The cross-opinion about Permendikbudristek is a positive signal that public dialectics in response to the policy is underway. However, existing rejection tends to be based on a mistaken understanding of context. However, it can be grateful that the majority of both parties both pros and cons remain in one understanding and goal that is to agree with the importance of the birth of this Permendikbudristek and the importance of preventing and dealing with sexual violence in the college environment.

It should be understood that the spirit of the formation of Permendikbudristek from the beginning is to protect all academic community in the college environment from the threat of sexual violence. The urgency of the establishment is also clearly stated in the consideration of Permendikbudristek 30/2021, which reads:

1) Every citizen is entitled to protection from all forms of violence including sexual violence in accordance with Pancasila and the Constitution of the Republic of Indonesia of 1945;
2) The increasing number of sexual violence that occurs in the community including universities directly or indirectly will have an impact on the less-than-optimal implementation of the Tridharma of Higher Education and reduce the quality of higher education;
3) To prevent and address sexual violence in college, it is necessary to provide arrangements that ensure legal certainty in the prevention and handling of sexual violence in college;
4) Based on the considerations referred to in the first, second, and third points, it is necessary to establish the Regulation of the Minister of Education, Culture, Research, and Technology on the Prevention and Handling of Sexual Violence in the College Environment.

The regulatory content in Permendikbudristek is also believed to be able to handle the current sexual violence emergency, especially in the educational environment. It is evident
from the inclusion of important principles formulated to protect the rights of victims. For example, Article 3 mentions progressive principles, such as the best interests of victims, justice and gender equality, and there is also equal rights and accessibility for persons with disabilities. In addition, Permendikbudristek can also be directly implemented by universities because it has included provisions in the field of prevention, handling, protection, and administrative sanctions. So, victims can be more courageous and feel safer when complaining about the incident to the university organizers (Center for Law and Policy Studies, 2021).

Through this Permendikbudristek, opportunities to include sexual education, including from customary and religious perspectives, can be more open with the obligation for universities to take precautions, one of which is in the form of learning. And in terms of expediency, however, the existence of Permendikbudristek is much better in order to encourage the elimination of sexual violence that is reported to be rife, rather than having no rules at all. Some recent cases show how victims bear a double burden due to the absence of clear legal protection.

Based on these arguments, the Indonesian Center for Legal and Policy Studies (PSHK) stated that the provisions in Permendikbudristek No. 30 of 2021 are appropriate in an effort to protect everyone from sexual violence that occurs in the college environment. Similar arrangements need to be established and applied in various other sectors, such as employment and staffing. In the midst of the poor alignment of the state on victims of sexual violence, Permendikbudristek No. 30 of 2021 shows the political direction of government law that is important, especially considering the discussion of the Sexual Violence Criminal Bill until now has not been completed and its substance continues to experience reduction of partisanship in victims.

**Regulation & Polemic Permendikbudristek No. 30 of 2021 on Prevention and Handling of Sexual Violence in the College Environment**

Article 1 paragraph (1) Permendikbudristek No. 30 of 2021 states that sexual violence is any act of degrading, insulting, harassing, and/or attacking one's body, and/or reproductive function, due to inequality of power relations and/or gender, which results in or can result in psychological and/or physical suffering including those that interfere with one's reproductive health and miss the opportunity to carry out higher education safely and optimally.

In addition to the definition as outlined above, in the decree there are also types of sexual harassment, among others, stipulated in Article 5 Paragraph (1) and (2) as follows:

1) Sexual violence includes actions performed verbally, non-physically, physically, and/or through information and communication technology.

2) Sexual Violence as referred to in paragraph (1) includes:

   a) Delivering speeches that discriminate or harass the physical appearance, condition of the body, and/or gender identity of the victim;
   b) Showing his genitals intentionally without the victim's consent;
   c) Delivering remarks that contain sexual seduction, jokes, and/or whistling to the victim;
   d) Staring at the victim with sexual and/or uncomfortable nuances;
   e) Sending sexually nuanced messages, jokes, pictures, photos, audio, and/or videos to the victim even though it is prohibited by the victim;
f) Taking, recording, and/or distributing sexually nuanced photos and/or audio and/or visual recordings of victims without consent;
g) Uploading photos of victims's body and/or personal information that are sexually nuanced without the victim's consent;
h) Disseminate information related to sexually nuanced body and/or personal victims without consent victims;
i) Peeking at or intentionally looking at the victim who is doing activities in person and/or in a private space;
j) Persuading, promising, offering something, or threatening the victims to conduct sexual transactions or activities that are not approved by the victims;
k) Giving sexual punishments or sanctions;
l) Touching, rubbing, groping, holding, hugging, kissing and/or rubbing parts of his body on the body of victims without the consent of victims;
m) Undressing victims without victims’ consent;
n) Forcing victims to conduct sexual transactions or activities;
o) Practicing the culture of the community students, teachers, and educators nuancing sexual harassments;
p) Attempted rape, but penetration does not occur;
q) Performing rape including penetration with objects or body parts other than the genitals;
r) Forcing or tricking victims to have an abortion;
s) Forcing or tricking victims to get pregnant;
t) Allow intentional occurrence of sexual violence; and/or
u) Doing other sexual acts.

Broadly speaking, Permendikbudristek 30/2021 regulates the prevention and handling of sexual violence in the college environment. Prevention of Sexual Violence in the college environment as stipulated in Article 6 paragraph (1) includes learning, strengthening governance, and strengthening the culture of the community students, teachers, and educators.

Handling sexual violence in the college environment through Permendikbudristek is done by means of assistance, protection, imposition of administrative sanctions, and recovery of victims.

In addition to handling, the regulation also regulates the imposition of sanctions against universities that do not implement the regulation. The provisions are contained in article 19 which states that Universities that do not conduct Prevention and Handling of Sexual Violence are subject to administrative sanctions in the form of termination of financial assistance or assistance of facilities and infrastructure for universities and/or decreased accreditation levels for universities.

One of the polemics discussed is whether a minister can make regulations that do not yet have their laws, in this case there is already Permendikbudristek on Prevention and Handling of Sexual Violence, even though the PKS Bill has not been passed. May, because there is a regulation that is delegate, in the sense that there is already a law, then the minister's regulation becomes a technical derivative regulation of the Law. And now Indonesia actually has legal bases such as the ratification of CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) in Law No. 7 of 1984, as well as other laws on sexual violence.
such as Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 21 of 2007 on Combating the Crime of Trafficking in Persons, etc. But in fact, not all cases of sexual violence that occur in the campus/college environment can be reached by the law mentioned earlier. Hence, there is a legal vacuum where the state must also be able to reach because of the rise of this phenomenon.

In addition to the rules that are delegates, there are also attribution properties. Hence, this Ministerial Regulation was made on the basis because the College is the jurisdiction of the Ministry of Education and Technology. So here the Ministry of Education fills the legal void regarding the handling and prevention of sexual violence, but only regulates what is under its authority, namely the college environment. It should be underlined, Permendikbudristek does not make provisions for criminal acts of sexual violence, therefore the level is the law not the Minister's Regulation. Referring to Article 15 paragraph (1) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, that the content material regarding criminal provisions can only be contained in the Law, Provincial Regulation, and/or District/City Regional Regulation. Also, although no one has ever regulated the definition of sexual violence before, then Permendikbudristek is not a problem to create a new definition because every regulation must have a definition of what is regulated in it. Provided that the Permendikbudristek does not form a new criminal act for example, which is the level must be in law and currently Indonesia does not have the law.

In the article as described above there is a phrase without the consent of the victim. This caused polemics because it received a response from various parties such as the Indonesian Ulema Council (MUI) which asked the government to revoke or revise the Permendikbudristek because it objected to the phrase related to victim consent or also known as consent. In addition to Partai Keadilan Sejahtera (Prosperous Justice Party) (PKS) Politician Mardani Ali Sera also stated through his Twitter account, that the phrase "without the consent of the victim" is interpreted as "the legalization of sex freedom". Then a similar opinion was also conveyed by one of the largest Islamic organizations in Indonesia, Muhammadiyah which stated that this regulation "contains elements of legalization of immoral acts and free sex based on consent" (BBC Indonesia, 2021). Actually, in the Permendikbudristek has explained the purpose of the phrase of approval, namely in Article 5 Paragraph (3) which states that the consent of the victim as referred to in Article 5 paragraph (2) letters l and m which include the terms "consent" or "consent of the victim": That condition is an element that is indeed used in the construction of acts of violence. It is reiterated very clearly in Article 5 paragraph (3) which
states that the elements of "victim consent" include "not under pressure, conscious, and not vulnerable". In law, the existence of this aspect of consent is related to the proficiency and maturity of learners. By law, an adult can judge the legal consequences of each choice of his or her legal actions. However, the recognition of autonomy does not mean ruling out the enactment of other values that also live in society, such as morality, decency, local customs, and religion.

The existence of the element "victim consent" also does not mean Article 5 paragraph (2) legalizes adultery. The focus of the provisions of Article 5 is to formulate the scope of acts of sexual violence. And logically, it is a misguided thought that the negation of the formulation of the rule is interpreted as justifying adultery as long as there is consent. If observed, there is no article in this Permendikbudristek that in writing shows the ability to commit adultery. In the Indonesian legal system, the principle of legality is known "Nullum delictum noela poena sine praevia lege poenali" which means an act cannot be punished, except based on the strength of existing laws and regulations. Therefore, the logic of thinking that should not mean this Permendikbudristek allows & legalizing adultery, but has not been regulated and therefore the perpetrator cannot be punished based on this Permendikbudristek. Contrary to the tradition of the common law legal system there is a well-known principle that says "anything that is not prohibited is permitted", anything that is not prohibited means it is allowed. Maybe this is what motivates the wrong interpretation and cannot be applied in the country of Indonesia which is a civil law.

In addition, the legal norm does not stand alone. William Graham Summer in the book SR Sianturi divides the norms that exist in the society in 4 categories namely religious norms, decency norms, norms of decency and legal norms (Sianturi, 2012). Therefore, if adultery is not regulated in law, it does not mean that adultery automatically becomes true in religion, decency, and decency. Instead, through this Permendikbudristek, the opportunity to include sexual education, including from the perspective of customs, religion, decency, and decency can be more open with the obligation for universities to do prevention, one of which is in the form of learning. And in terms of expediency, however, the existence of Permendikbudristek is much better in order to encourage the elimination of sexual violence that is reported to be rife, rather than having no rules at all. Some recent cases show how victims bear a double burden due to the lack of clear legal protections.

Key Points in Permendikbudristek No. 30 of 2021

The focus of Permendikbudristek No. 30 of 2021 is Sexual Violence

The focus of Permendikbudristek Number 30 of 2021 is on one type of violence. The regulation does not address activities that are contrary to religious and ethical norms beyond acts of sexual violence. Permendikbudristek only targets one type of violence, namely sexual violence with a very clear definition. Referring to Article 1, the definition of sexual violence is any act of degrading, insulting, harassing, and/or attacking one's body, and/or reproductive function, due to inequality of power and/or gender relations, which results in or can result in psychological and/or physical suffering including those that interfere with one's reproductive health and miss the opportunity to carry out higher education safely and optimally.

Therefore, there is no need for understanding or regulation regarding adultery or free sex, because the focus of the discussion is in accordance with the title of Prevention and Handling
of Sexual Violence, not Prevention and Handling of adultery / free sex. So, it is appropriate that this Permendikbudristek includes the understanding of sexual violence and any kind of action, because regulating adultery or free sex can be out of context from the regulation. And it is fitting that there is a phrase "without the consent of the victim" because violence is not consent, certainly without the consent of the victim.

Prioritize Victims' Rights

Reporting of criminal acts of sexual harassment against women in the media technology and information is currently constrained by various factors, one of which is that the victim will receive a harsher sneer than the perpetrator then questioned the way of dress and behavior, these two things justify the reason the woman received sexual harassment, with women who spoke up for what they experienced considered only seeking attention and considered to be catapulting. Lies and every incident of sexual harassment not a few women and men who feel the victim does not need to share his story (Fitria, 2019). Protection and rights of victims are the top priority in Permendikbudristek Number 30 of 2021. The target of this Permendikbudristek is to protect tens of thousands or even hundreds of thousands of victims and to prevent continuity of victims. The prevention and treatment of sexual violence is carried out in the principle of the best interests of the victim, justice and gender equality, equal rights and accessibility for persons with disabilities, accountability, independence, prudence, consistency, and guarantee of non-existence.

Permendikbudristek Target Number 30 of 2021

The targets of Permendikbudristek Number 30 of 2021 as stated in Article 4 include students, teachers, educators, and those who stay the campus, and general society that interacts with students, educators, and education personnel in the implementation of Tridharma.

Forms of Sexual Violence

Sexual violence referred to in this rule includes actions performed verbally, non-physically, physically, and/or through information communication technology. Verbal and online acts included in consideration of this type of sexual violence are often considered trivial when it has an impact on the psychology of the victim and limits the right to education or academic work. Specifically, there are 21 forms of sexual violence in Permendikbudristek Number 30 of 2021 as stated in Article 5.

Handling that Must Be Done by The College

If there are reports of sexual violence, the college is obliged to handle that includes assistance, protection, the imposition of administrative sanctions, and the recovery of victims. This provision is set out in Articles 10 to 19.

1) Mentoring in the form of counseling, health services, legal assistance, advocacy, and/or social and spiritual guidance.

2) The sustainability of education or employment, the provision of safe houses, and victims or witnesses are free from threats related to the testimony given.
3) Administrative imposition. Sanctions consist of three groups, namely mild, moderate, and severe. The form of sanctions imposed is carried out proportionately and fairly in accordance with the recommendations of the task force. In addition, the sanctions imposed do not override other regulations.

4) The recovery of victims is based on psychologists, medical personnel, religious leaders, and victim companion organizations. The recovery period does not reduce the right of learning and/or staffing.

**Sanctions are not oriented towards the perpetrators.**
Sanctions imposed on perpetrators must be based on the impact of the actions committed on the condition of the victim and the campus environment, not oriented to the perpetrator (Article 14).

**Compulsory College Form Task Force**
As a follow-up to Permendikbudristek Number 30 of 2021, all universities are obliged to form a Task Force (Task Force) based on the predetermined time. All universities are obliged to create such task forces, there is a process, there is a list of sanctions, there is protection to victims, there are responsibilities. So, this is a complete ministerial regulation.

The task force was first formed through an ad-hoc selection committee. Based on the rules of Article 27, the task force consists of elements of educators, education personnel, and students with regard to the representation of female membership, at least two-thirds of the number of members.

If within the period of formation of the Task Force there is an act of sexual violence, the university can report the case through the LAPOR platform. Later, the ministry will provide recommendations related to the steps that must be done through the portal.

**Reports Are Conducted Every Semester**
Rectors and directors of universities are required to conduct regular monitoring and evaluation (Monev) of all sexual violence prevention and handling activities and task force performance on campus. Based on Article 54 of Permendikbudristek No. 30 of 2021, monev results are reported every semester in the form of sexual violence prevention activities, survey results conducted by the task force, data on reporting sexual violence, sexual violence handling activities, and sexual violence prevention activities. To avoid administrative burdens, reporting systems for the prevention and handling of sexual violence can be done online.

**CONCLUSION**
The establishment of regulations on the handling of sexual violence is very important in the campus environment considering the high number of sexual harassments which is as much as 77% of lecturers have admitted that sexual violence does occur on campus. Of these 77% only 63% chose not to report acts of sexual violence, this is because worried about negative assumptions from the community that will be pinned to the victim. Permendikbudristek 30/2021 regulates the prevention of sexual violence from learning, strengthening governance and culture, and regulating the handling of sexual violence from mentoring to recovery victim.
There are several polemics that arise from this regulation such as the absence of criminal provisions and the phrase "without the consent of the victim" which is considered to legalize adultery. However, rejection and existing polemics tend to be based on a misguided understanding of context as straightened out in this study. Precisely, with this regulation the opportunity to include sexual education, including from a customary and religious perspective, can be more open with the obligation for universities to do prevention, one of which is in the form of learning. In terms of expediency, however, the existence of Permendikbudristek is much better in order to encourage the elimination of sexual violence that is reported to be rife, rather than having no rules at all. Some recent cases show how victims bear a double burden due to the absence of clear legal protection.

Universities are expected to be earnest in implementing Permendikbudristek No. 30 of 2021 and in its implementation need supervision from the relevant ministries and to provide strict sanctions if there is a campus that is violating or not complying with these rules. Then, similar measures are expected to be formed and applied in various other sectors, such as employment and staffing. Students with this regulation are expected to be more active in the prevention and handling of sexual assault cases in the campus environment with the attitude of reporting every incident that is under these rules it can be categorized as a violation and can be processed legally.

REFERENCES
A Juridical Analysis of Regulations and Polemics in a Regulation Concerning Higher Education’s Sexual Harassment