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Supreme Court Decision Number 34P/HUM/2022 and Efforts to Strengthen the Prevention and Handling of Sexual Violence in Higher Education Institutions

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Abstract

In response to the increasing prevalence of sexual violence cases in higher education institutions, the Ministry of Education, Culture, Research, and Higher Education issued Ministerial Regulation No. 30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education Institutions. However, the regulation has sparked debate among the public, particularly regarding Article 5 (paragraph 2), which contains the phrase “without consent” a phrase deemed open to multiple interpretations, legalizing adultery, and contradicting societal norms and religious values. This controversy subsequently became the subject of a petition for judicial review at the Supreme Court in Case No. 34 P/HUM/2022, by the Minangkabau Traditional Council (LKAAM) of West Sumatra. However, in its ruling through Supreme Court Decision No. 34 P/HUM/2022, the Supreme Court dismissed the petition. This study examines about Supreme Court Decision Number 34/P/HUM/2022 and efforts to strengthen legal protection for the prevention and handling of sexual violence in higher education institutions. The theory used in this study is the Theory of Legal Protection by Philipus Hadjon. The research findings that, in relation to the prevention and handling of sexual violence in higher education institutions, the presence of Ministry of Education, Culture, Research, and Technology Regulation Number 30 of 2021, reinforced by Supreme Court Decision Number 34 P/HUM/2022, provides both preventive and repressive legal protection.

Keywords

Sexual Violence, Consent, Supreme Court, Legal Protection

I. Introduction

Sexual violence is a heinous crime that remains a serious problem in Indonesia to this day. According to records from the National Commission on Violence Against Women (Komnas Perempuan), the majority of sexual violence victims are women and children. Sexual violence occurs not only in private spaces but has also spread to public spaces and the digital realm, meaning there is almost no safe space left for the public to be free from sexual violence. One instance of sexual violence that remains a serious issue is sexual violence occurring within higher education institutions. Higher education institutions, which should serve as safe spaces for intellectual development and character education while upholding the three pillars of higher education, have unfortunately all too often become sites where various forms of sexual violence occur whether perpetrated by fellow students or by those in positions of power, such as faculty members, educational staff, and other members of the academic community.

Sexual harassment can occur anywhere, however it is rampant in urban environments and sometimes executed in a quiet place far from social activities¹. Data from the National Commission on Violence Against Women (Komnas Perempuan) indicates that during the 2015–2021 period, higher education institutions accounted for the highest percentage of reported sexual violence cases in the educational sector, at 35%. Additionally, media reports and surveys reveal that sexual violence occurs at dozens of higher education institutions across Indonesia, with the majority of victims being students. Some sources even note that campuses rank as the third most common location for

¹ Nurbayani, Siti, Moh Dede, and Millary Agung Widiawaty. "Utilizing library repository for sexual harassment study in Indonesia: A systematic literature review." *Heliyon* 8, no. 8 (2022).

the prevalence of sexual violence.² Meanwhile, according to reports compiled by Tirto, Vice Indonesia, and The Jakarta Post in 2020, there were 174 reports of sexual violence at 79 universities in Indonesia. Of these, 172 reports involved students, one involved a faculty member, and one involved a staff member.³

Cases of sexual violence on college campuses often go unreported because many victims do not dare to speak up about what they have experienced. Furthermore, unequal power dynamics further marginalize victims, who are predominantly students⁴. It is not uncommon for victims who attempt to report incidents to face revictimization, bullying, and academic sanctions. In some cases, victims find themselves in a particularly vulnerable position because the perpetrators hold academic authority that can influence the victims' educational progress. This situation makes sexual violence on campus a tip-of-the-iceberg phenomenon, with the actual number of cases believed to be far greater than those reported. The prevalence of sexual violence cases in higher education institutions indicates that this is no longer merely an individual issue between the victim and the perpetrator, but has become a structural problem that must be immediately evaluated and addressed through the formulation of preventive measures. Sexual violence in higher education requires special attention.⁵

² Rakhmawati, Dini, Desi Maulida, and Yovitha Yuliejantiningih. 2022. "Pembanjiran Informasi, Asertivitas Seksual Dan Kekerasan Seksual Di Perguruan Tinggi". *Indonesian Journal of Guidance and Counseling: Theory and Application* 11 (Special Ed), 75-82. <https://doi.org/10.15294/ijgc.v11i2.60831>.

³ Nurtjahyo, L. I. (2022). *Membongkar Kekerasan Seksual di Perguruan Tinggi: Pemikiran Awal*. Yayasan Pustaka Obor Indonesia.)

⁴ Sumintak, Sumintak, and Abdullah Idi. "Analisis Relasi Kuasa Michel Foucault: Studi Kasus Fenomena Kekerasan Seksual di Perguruan Tinggi." *Jurnal Intelektualita: Keislaman, Sosial Dan Sains* 11, no. 1 (2022): 55-61

⁵ Simanjuntak, Elizabeth Grace, and M. Falikul Isbah. "the New Oasis": Implementasi Permendikbud tentang pencegahan dan penanganan kekerasan seksual di Perguruan Tinggi." *Jurnal Analisa Sosiologi* 11, no. 3 (2022): 537-555.

In response to the increasing prevalence of sexual violence cases in higher education institutions, the Ministry of Education, Culture, Research, and Higher Education issued Ministerial Regulation No. 30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education Institutions⁶. This regulation is one of the efforts by higher education institutions to provide a safe space and protection for the entire academic community. Furthermore, the existence of this regulation underscores that higher education institutions serve not only as academic spaces but also as safe spaces in ensuring legal protection and the human rights of every member of the campus community⁷.

One of the key points in this Ministry of Education, Culture, Research, and Technology Regulation is the expansion of the definition of sexual violence. Under this Regulation, sexual violence is not only understood as physical acts but also encompasses verbal, non-physical, and electronic acts, as well as acts committed through power dynamics. Article 5, paragraph (2), outlines various forms of conduct categorized as sexual violence, such as sexually suggestive verbal harassment, intentionally exposing sexual organs, sending sexual messages or content without consent, touching the victim's body without consent, sexual intimidation, staring at the victim with sexual intent, and forcing sexual activity. The regulation explains that sexual violence can occur in various forms that have psychological impacts on the victims.

Additionally, Ministry of Education, Culture, Research, and Higher Education Regulation Number 30 of 2021 also mandates that every higher education institution establish a Task Force for the

⁶ Adawiyah, Robiatul, Reza Hilmy Luayyin, and M. Nabat Ardli. "Analisis Permendikbud Ristek No 30 Tahun 2021 dan konstruksi sosial kekerasan seksual di perguruan tinggi perspektif sosiologis." *Al Qodiri: Jurnal Pendidikan, Sosial dan Keagamaan* 19, no. 3 (2021): 781-796.

⁷ Quran, Raineka. 2022. "Kekerasan Seksual Di Lingkungan Perguruan Tinggi". *Jurnal Ilmiah Wahana Pendidikan* 8 (15), 480-86.
<https://doi.org/10.5281/zenodo.7052155>

Prevention and Handling of Sexual Violence (Satgas PPKS). This task force plays a crucial role in the prevention and handling of sexual violence within the higher education sector. However, the existence of this regulation has sparked both support and opposition among the public. Those in favor view the regulation as a legal framework for preventing and addressing sexual violence in higher education institutions.

Meanwhile, those opposed argue that Ministry of Education, Culture, Research, and Technology Regulation Number 30 of 2021 has sparked controversy in society, particularly regarding the use of the phrase “without the victim’s consent” in certain provisions of Article 5, paragraph (2). Some parties contend that this phrase is open to multiple interpretations and is perceived as seemingly legalizing sexual activities outside societal norms if conducted based on consent. This controversy subsequently became the subject of a petition for judicial review at the Supreme Court in Case Number 34 P/HUM/2022, filed by the Minangkabau Traditional Council (LKAAM) of West Sumatra. However, in its ruling through Supreme Court Decision Number 34 P/HUM/2022, the Supreme Court dismissed the petition. This Supreme Court decision is viewed as an effort to strengthen and support the prevention and handling of sexual violence in higher education institutions through Ministry of Education, Culture, Research, and Technology Regulation Number 30 of 2021. Based on this description, this study examines the relationship between Supreme Court Decision Number 34 P/HUM/2022 and efforts to address sexual violence in higher education institutions.

II. Method

This research used normative juridical research methods. Normative juridical research is a method of legal research carried out by examining library materials or secondary data. This study was conducted to Supreme Court Decision Number 34P/HUM/2022 and Efforts to Strengthen the Prevention and Handling of Sexual Violence in Higher Education Institutions. This approach used a review of secondary data in the form of documents or literature, which is carried out by collecting information obtained through laws and regulations, written data, books, seminar results, research results, studies and other references, as well as searching data and information through websites related to the issues discussed in this research. The secondary data that have been obtained are analyzed qualitatively and then presented for the purpose of conclusions.

III. Results and Discussions

Sexual Violence and Its Categories

Violence can be defined as an act that violates the law or an inappropriate form of treatment.⁸ In the context of sexual violence, sexual violence is any act ranging from sexual harassment to forcing someone to engage in sexual intercourse without the victim's consent or when the victim does not wish to, and/or engaging in sexual intercourse in ways that are unnatural or unwanted by the victim, as well as depriving

⁸ Wulandari, Cahya, Sukadari, Winarsih, dan Chanidia Ari Rahmayani. "Justice for Child Victims of Violence in the Pesantren Environment (Study of Decision Number 5642 K/Pid.Sus/2022)." *The Digest: Journal of Jurisprudence and Legisprudence* 6, no. 2 (2025)

them of their sexual needs⁹. According to the World Health Organization (WHO), sexual violence encompasses all acts committed with the intent to coerce sexual acts or other actions related to a person's sexuality, regardless of the relationship or status with the victim. Sexual violence constitutes a violation of human rights, a crime against human dignity, and a form of discrimination that must be eradicated¹⁰.

According to the National Commission on Violence Against Women (Komnas Perempuan), sexual violence is defined as any act of a sexual nature committed by an individual or a group of individuals without the victim's consent, resulting in physical, psychological, sexual, and economic suffering, including acts occurring in domestic, public, and state settings. Additionally, Komnas Perempuan categorizes sexual violence into fifteen forms, namely:¹¹ Rape; Sexual Intimidation, including Threats or Attempts; Sexual Harassment, defined as sexual acts involving physical or non-physical contact targeting the victim's sexual organs or sexuality; Sexual Exploitation, Trafficking of Women for Sexual Purposes, Forced Prostitution, Sexual Slavery, Forced Marriage, Forced Pregnancy, Forced Abortion, Forced Contraception and Sterilization, Sexual Torture, inhumane and sexually tinged punishment, harmful or discriminatory traditional practices with sexual overtones, and sexual control, including through discriminatory rules justified by morality and religion.

Meanwhile, Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021 defines sexual violence in higher

⁹ Munandar Sulaeman dan Siti Homzah (Ed.), "Kekerasan Terhadap Perempuan Tinjauan dalam Berbagai Disiplin Ilmu dan Kasus Kekerasan", Refika Aditama, Bandung, 2010, hlm.79

¹⁰ Saefudin, Yusuf, Fatin Rohmah Nur Wahidah, Rahtami Susanti, Luthfi Kalbu Adi, and Prima Maharani Putri. 2023. "Tindak Pidana Kekerasan Seksual Dan Perlindungan Hukum Bagi Korban Kekerasan Seksual Di Indonesia". *Kosmik Hukum* 23 (1):24-33.

¹¹ Purwanti, Ani, and Marzellina Hardiyanti. "Strategi penyelesaian tindak kekerasan seksual terhadap perempuan dan anak melalui RUU kekerasan seksual." *Masalah-Masalah Hukum* 47, no. 2 (2018): 138-148.

education as actions that degrade, insult, harass, and/or attack a person's body and/or reproductive functions due to power imbalances and/or gender disparities, resulting in or potentially resulting in psychological and/or physical suffering, including those that disrupt a person's reproductive health and deprive them of the opportunity to pursue higher education safely and optimally¹². Additionally, the regulation classifies sexual violence into several forms, including¹³:

- a. Making discriminatory or harassing remarks regarding the victim's physical appearance, physical condition, and/or gender identity;
- b. Intentionally exposing one's genitals without the victim's consent;
- c. Making remarks containing sexual advances, jokes, and/or whistles directed at the victim;
- d. Staring at the victim in a sexual and/or uncomfortable manner;
- e. Sending messages, jokes, images, photos, audio, and/or videos of a sexual nature to the victim despite the victim having already prohibited such actions;
- f. Taking, recording, and/or distributing sexually suggestive photos and/or audio and/or visual recordings of the victim without the victim's consent;
- g. Uploading sexually suggestive photos of the victim's body and/or personal information without the victim's consent;
- h. Disseminating information regarding the victim's body and/or personal details of a sexual nature without the victim's consent;
- i. Peeping or intentionally observing the victim while they are engaged in private activities and/or in a private space;

¹² Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021

¹³ Section 5, Paragraph 2 of Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021

- j. Coaxing, promising, offering something, or threatening the victim to engage in sexual transactions or activities not consented to by the victim;
- k. Imposing punishments or sanctions of a sexual nature;
- l. Touching, stroking, groping, holding, hugging, kissing, and/or rubbing one's body against the victim's body without the victim's consent;
- m. Removing the victim's clothing without the victim's consent;
- n. Forcing the victim to engage in sexual acts or activities;
- o. Practicing a culture within the student, educator, and educational staff community that involves sexual violence;
- p. Attempting rape, though penetration did not occur;
- q. Committing rape, including penetration with an object or body part other than a genital organ;
- r. Oring or deceiving the victim into having an abortion;
- s. Forcing or deceiving the victim into becoming pregnant;
- t. Intentionally allowing sexual violence to occur; and/or
- u. Committing other acts of sexual violence

It is the categorization of sexual violence contained in Article 5, paragraph (2), of Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021 that has sparked controversy among the public. The “victim's consent” clause is considered open to multiple interpretations and contrary to societal values. The victim consent clause found in points b, f, g, h, j, m, and l is viewed by some as an attempt to legalize adultery if it is committed voluntarily or without coercion. Consequently, certain groups are urging that the regulation be reviewed.

The Concept of Consent in Sexual Violence

The concept of consent is one of the key concepts in discussions of sexual violence, particularly from the perspective of modern law and human rights. Consent can be defined as approval given consciously, voluntarily, and without coercion regarding a sexual activity. In this context, a sexual act is considered sexual violence if it is performed without consent¹⁴.

Sexual consent is important because it serves as the legal definition of what constitutes sexual assault, rape, and harassment¹⁵. Although, from a legal perspective, the presence of willingness or consent can negate the unlawful element, the concept of consent must emphasize several social and psychological aspects. Consent must be given without intimidation, threats, manipulation, child grooming, abuse of power, or the victim's condition at the time of the incident. Consent is considered invalid if given under the influence of alcohol, drugs, or other psychological impairments.

In the context of power dynamics and gender, consent in cases of sexual violence is also closely tied to the power dynamic between the victim and the perpetrator. According to Susan Brownmiller¹⁶, sexual violence often occurs due to an imbalance of power between the perpetrator and the victim. Additionally, the perpetrator's dominance over the victim significantly influences the occurrence of sexual violence.

¹⁴ Rahmasari, Rizkia. "Analisa Makna 'Persetujuan' dalam Pemendikbud Ristek No. 30 Tahun 2021 terhadap Fenomena Kekerasan Seksual di Lingkungan Pendidikan yang Dianggap sebagai Upaya Legitimasi Terhadap Perzinaan." *Jurnal Penegakan Hukum Dan Keadilan* 3, no. 1 (2022): 78-89.

¹⁵ SARASWATI, RIKA. "Mendefinisikan dan Mengkomunikasikan Persetujuan (Sexual Consent) Sebagai Upaya Pencegahan dan Penanganan Kekerasan Seksual untuk Mewujudkan Kemanusiaan yang Adil dan Beradab." (2023).

¹⁶ Brownmiller, Susan. *Femininity*. Open road media, 2013.

Therefore, consent must take into account the psychological, social, and power dynamics.

In Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021, Article 5 (paragraph 3), it is stated that the victim's consent is deemed invalid if it is given under certain conditions, including: first, the victim is a minor as defined by law; second, the victim is under threat or coercion; and third, there are indications that the perpetrator has abused their authority. Furthermore, the victim's consent is deemed invalid if the victim is under the influence of alcohol, illegal drugs, or narcotics; if the victim is unconscious (asleep, ill); if the victim is in a psychologically vulnerable state; or if the victim is experiencing tonic immobility or a state of shock¹⁷.

Petition for Judicial Review Regarding Ministerial Regulation No. 31 of 2021

The issuance of Minister of Education, Culture, Research, Technology, and Higher Education Regulation No. 31 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education Institutions represents a strategic effort to prevent and address the rising incidence of sexual violence within the higher education sector¹⁸. Prior to the enactment of this regulation, cases of sexual violence in higher education institutions were extremely difficult to uncover. Moreover, the definition of sexual violence at that time was limited to physical violence, while verbal and digital violence were not considered forms of sexual violence. Additionally, many victims who attempted to speak out

¹⁷ Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021

¹⁸ Alpien, Riyan. 2022. "Perlindungan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual Di Perguruan Tinggi". *Lex Renaissance* 7 (1):69-83. <https://doi.org/10.20885/JLR.vol7.iss1.art6>.

about the sexual violence they experienced faced revictimization, threats, and even academic sanctions for allegedly tarnishing the university's reputation. This was the experience of one victim of sexual violence at a university whose name was suddenly struck from the graduation list because of her courage in reporting the sexual violence she had endured¹⁹. The incident went viral across various media, and after receiving widespread support, the university eventually reinstated her name on the graduation list. This case demonstrates that when it comes to legal protection and the handling of sexual violence, victims cannot stand alone without support from various parties—such as student organizations, the media, and public support on social media—because the parties they face hold positions of power superior to their own. This regulation is intended to ensure that no similar cases occur within higher education institutions. This regulation is an important part of ensuring that the rights to security, justice and recovery are fulfilled for victims.²⁰

However, this regulation has sparked both support and opposition within the public. One group opposing the regulation is the Minangkabau Customary Council (LKAAM) of West Sumatra, which subsequently filed a petition for a judicial review of the regulation with the Supreme Court under Case Registration Number 34P/HUM/2022. The petition was filed because the petitioners believe that several provisions in Ministerial Regulation No. 31 of 2021 on the Prevention and Handling of Sexual Violence are inconsistent and contrary to higher-ranking laws and regulations, particularly Article 5, Paragraph 2, regarding the categorization of sexual violence in higher education institutions. In addition, the petitioners also argued that the article

¹⁹ <https://www.cnnindonesia.com/nasional/20211204133709-12-729806/laporkan-pelecehan-mahasiswa-unsri-sempat-dihambat-ikut-yudisium> accessed at May 18 2026

²⁰ Bustaman, Bustaman, and Amir Machmud. "Analisis Perlindungan Hukum dalam Pencegahan dan Penanganan Kekerasan Seksual di Lingkungan Perguruan Tinggi." *AKADEMIK: Jurnal Mahasiswa Humanis* 5, no. 2 (2025): 1067-1078.

contradicts the moral values, social norms, religion, and culture of the Indonesian people²¹.

The main objection raised in the judicial review is the use of the phrase “without the victim’s consent” in the categorization of sexual violence contained in Article 5(2)(b), (f), (g), (h), (j), (l), and (m). According to the petitioner, these provisions open the door for universities to legalize sexual acts on campus as long as they are conducted with the consent of the parties involved. According to the petitioner, this construction contradicts Law No. 20 of 2003 on the National Education System, which emphasizes that educational institutions are institutions for the formation of individuals who are faithful, God-fearing, and of noble character.

In one of the points of argument presented by the petitioner in the judicial review, it is stated:

“The wording of the Article in question, particularly the phrases ‘without the victim’s consent’ and ‘not consented to by the victim,’ implicitly opens the door to the legalization of immoral acts within the higher education environment. This clearly contradicts the purpose of Article 2(b) of Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education Institutions.”²²

Another reason for the request for a judicial review of this regulation is that the petitioner also believes that Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021 does not reflect the moral values and customary norms prevailing in Indonesia, as this regulation is seen as legitimizing casual relationships and casual sex in higher education institutions as long as they are based on mutual consent. Furthermore, the petitioner argues that the regulation is inconsistent with the traditional philosophy held by the Minangkabau community,

²¹ Supreme Court Decision No. 34P/HUM/2022

²² *ibid*

namely “adat basandi syarak, syarak basandi Kitabullah,” which means that all social behavior, community relations, and the customary legal system must align with Islamic principles derived from the Quran and the hadith. The petitioner’s request in this case is for the Ministry of Education, Culture, Research and Technology, and Higher Education to revoke the provisions of Article 5, paragraph (2), letters b, f, g, h, j, l, and m.

Amicus Curiae in Support of the Prevention and Handling of Sexual Violence

A judicial review of Minister of Education, Culture, Research, Technology, and Higher Education Regulation No. 31 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education Institutions, filed by the Minangkabau Customary Council (LKAAM) of West Sumatra, has drawn reactions from several parties, including the National Commission on Violence Against Women (Komnas Perempuan) and several other civil society organizations. These parties subsequently participated as amicus curiae to provide legal, social, and human rights perspectives regarding the prevention and handling of sexual violence cases in higher education institutions. This is particularly relevant in the context of addressing sexual violence in higher education institutions from a victim-centered perspective. Amicus Curiae is a form of public participation designed to assist judges in gaining a broader and deeper perspective when reviewing a case, specifically Case No. 34P/HUM/2022.

Amicus Curiae, or Friends of the Court, is a legal concept originating from Roman legal tradition and later developed within the common law system²³. Amicus Curiae is a legal concept that allows third

²³ Aprilia, Indah Siti, Tabitha Roulina Anastasya, Giovanni Cornelia, Keiko Patricia Liwe, Hanivah Fitriyani, and Sarah Angelina Setiahata Lumban Tobing. "Peran Non-

parties to provide legal opinions to the court in a case, even though they are not directly involved²⁴. Through this mechanism, the court may invite third parties to provide information or legal perspectives on issues that may not yet be well-known to the court²⁵. Amicus Curiae originated from Roman tradition and later developed significantly within the common law system in the 14th century. The United States, for example, has widely utilized amicus curiae in civil rights, criminal, constitutional, abortion, and other cases.²⁶

The Indonesian Legal Aid Foundation (YLBHI), the Institute for Criminal Justice Reform (ICJR), MaPPI Faculty of Law, University of Indonesia (MaPPI FHUI), LBH APIK Jakarta, and SAFEnet, have joined forces to form the Civil Society Coalition for Education Free from Violence in 2022²⁷. The purpose of forming this coalition is to prevent and address sexual violence in higher education institutions. Non Government Organizations for Education Free from Sexual Violence filed an amicus curiae brief in the judicial review of Ministry of Education and Culture Regulation No. 30/2021, as they view the request for a substantive review of the regulation as a step backward in

Governmental Organization (Ngo) Sebagai Amicus Curiae Dalam Penegakan Hukum Bagi Kasus Kekerasan Seksual Di Perguruan Tinggi: Studi Kasus Proses Judicial Review Permendikbud Nomor 30 Tahun 2021." *Jurnal Pendidikan Sejarah dan Riset Sosial Humaniora* 4, no. 3 (2024): 415-425.

²⁴ Ksatria, Cokorda Agung Anuradha Darmaning. 2025. "Prinsip Amicus Curiae Terhadap Putusan Hakim Dalam Perkara Pidana Di Indonesia". *Ethics and Law Journal: Business and Notary* 3 (1). <https://doi.org/10.61292/eljbn.255>.

²⁵ MaPPI FHUI. Tolak Penjarakan Korban Kekerasan Seksual Komentar Tertulis sebagai Amicus Curiae (Sahabat Pengadilan) terhadap perkara Nomor 6/PID.SUS-Anak/2018/JMB di Pengadilan Tinggi Jambi. (Depok: MaPPI FHUI, 2018). Hal. 5

²⁶ Pusat Kajian Hukum dan Keadilan Sosial Fakultas Hukum Universitas Gadjah Mada. Amicus Cuirae atas Perkara Pidana No. 14/PID.SUS/2024/PN JPA atas nama Daniel Fritz Maurits Tangkilisan di Pengadilan Jepara. (Yogyakarta: Fakultas Hukum Universitas Gadjah Mada, 2024)

²⁷ Aziz, T. (2022). Efektivitas Bantuan Hukum Dalam Kasus Tindak Pidana di Lembaga Bantuan Hukum Banda Aceh (Analisis Hukum Islam) (Doctoral dissertation, UIN Ar-Raniry)

efforts to prevent and protect victims of sexual violence in higher education settings. This coalition argues that Permendikbud 30/2021 was drafted in accordance with Law No. 12 of 2011 on the Formation of Legislation, and the content of Permendikbud 30/2021 regarding sexual violence is not about upholding public morality²⁸. The Coalition also emphasizes the importance of the concept of consent as the basis for regulations on sexual violence, as well as the role of Permendikbud 30/2021 in filling existing legal gaps. Furthermore, the Coalition assesses that the subject matter of the provisions forming the basis of the request for a substantive review namely the phrases “without consent” and “that is not consented to” lacks a causal link (*causaal verband*) with the harm suffered by the petitioner²⁹.

In addition to Non Government Organizations, the *amicus curiae* brief was also submitted by the National Commission on Violence Against Women (Komnas Perempuan). In the brief, Komnas Perempuan essentially supports the efforts of the Ministry of Education, Research, Technology, and Higher Education to prevent and address sexual violence in higher education institutions. One of the points raised by Komnas Perempuan is that the phrase “without the victim’s consent” is a crucial concept for distinguishing the actions that form the subject of the petition, particularly because it helps identify who the perpetrator is and who the victim is, thereby enabling the determination of appropriate recovery services and sanctions regarding the sexual activity in question. This concept is also found in various similar regulations concerning efforts to prevent and address sexual violence³⁰.

²⁸ Siaran Pers, “Penyerahan Amicus Curiae dan Mendorong Mahkamah Agung Menolak Perkara Uji Materi Permedikbud 30/2021, <https://ylbhi.or.id/informasi/siaran-pers/lindungi-korban-jangan-hilangkan-harapan/>, diakses pada 18 Mei 2026

²⁹ Ibid

³⁰ <https://komnasperempuan.go.id/laporan-pemantauan-ham-detail/keterangan-tertulis-komnas-perempuan-sebagai-sahabat-pengadilan-amicus-curiae-pada-perkara->

Supreme Court Ruling and Efforts to Strengthen Regulations

In the constitutional review filed by the Minangkabau Customary Council (LKAAM) of West Sumatra under case registration number 34P/HUM/2022, the Supreme Court dismissed the constitutional review petition filed by the petitioner. In its reasoning, the Supreme Court stated that Article 5 (paragraph 2), letters b, f, g, h, j, l, and m which were the subject of the petitioner's constitutional review do not pertain to consent for sexual activity or adultery, but rather to the victim's consent in cases of sexual violence. In its explanation, the Supreme Court opined that from a criminal law perspective, consent or permission is one of the key principles in determining whether an act or conduct can be categorized as a criminal offense or not³¹.

Furthermore, Supreme Court Decision No. 34 P/HUM/2022 holds significant importance not only from a formal legal perspective but also in the context of protecting victims' rights. With the rejection of the request for a substantive review, Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021 retains its legal force and can serve as a basis for higher education institutions in formulating policies for the prevention and handling of sexual violence. This demonstrates a strengthening of the state's commitment to providing protection for victims while creating a safe and dignified educational environment.

Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021 demonstrates the state's commitment to

34-er-psg-iii-34-p-hum-2022-mengenai-permohonan-uji-materiil-permendikbudristek-nomor-30-tahun-2021 accessed at May 18, 2026

³¹ <https://jdih.unnes.ac.id/f/putusan-34-p-hum-2022-ma-ri-6972dca4b56aa-1?passcode=> hal 78 accessed at May 18, 2026

preventing and addressing sexual violence in higher education institutions³². This is especially true following the Supreme Court's Decision No. 34 P/HUM/2022, which legitimizes the existence of this regulation. Moreover, at the time this regulation was enacted, Indonesia did not yet have a criminal law on sexual violence. When this regulation was enacted, a bill on criminal acts of sexual violence was under discussion in the House of Representatives. Thus, it can be said that Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education Institutions serves as a pilot project in the regulatory framework for addressing violence in Indonesia. Its position was further strengthened following Supreme Court Decision No. 34 P/HUM/2022.

Sexual violence is not a new problem in Indonesia, but Indonesian law has not yet fully provided firm legal consequences for perpetrators and protection for victims (the draft law on criminal acts of sexual violence was under discussion in the House of Representatives)³³. Supreme Court Decision No. 34 P/HUM/2022 constitutes a form of legal protection for citizens, particularly the campus community (students, faculty, and educational staff), to ensure a sense of safety within higher education institutions. According to Philipus Hadjon, legal protection is an effort to safeguard the rights of the public through legal mechanisms, both preventively (prevention) and repressively (handling)³⁴. In relation to the prevention and handling of sexual

³² Khoiri, Ikhwanul, and Muhammad Zidny Kafa. "Policy Analysis of Permendikbudristek Number 30 of 2021: Dynamics of Higher Education Resistance and Rethinking the Best Solutions." *Journal of Governance and Public Affairs* 1, no. 2 (2024): 19-42.

³³ Paradias, Rosania, and Eko Soponyono. "Perlindungan hukum terhadap korban pelecehan seksual." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 61-72.

³⁴ Mufidah, Zaqiatul, Moh Badrus Solichin, Moreno Richard Firlyansyah, Evi Agustin, Amanta Eghen Azzahro, Akhmad Syafi'I. Putra, Muhammad Fahimulhuda, and Muhammad Dival Rahmandani. "Kegagalan Perlindungan Anak dalam Kasus KDRT

violence in higher education institutions, the presence of Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021, reinforced by Supreme Court Decision No. 34 P/HUM/2022, provides legal protection through both preventive and repressive measures.

Preventive legal protection under Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021, reinforced by Supreme Court Decision No. 34 P/ HUM/2022 can be seen in the efforts to prevent sexual violence in higher education institutions, one of which is by requiring every institution to establish a Task Force for the Prevention and Handling of Sexual Violence, which also outlines strategic measures for preventing sexual violence within these institutions³⁵. Regarding the aspect of repressive legal protection, this is evident in the procedural steps for the prevention and handling of sexual violence, ranging from the reporting stage to the imposition of sanctions on perpetrators of sexual violence. Additionally, Supreme Court Decision No. 34 P/HUM/2022 reflects the evolving legal paradigm in Indonesia, which is increasingly prioritizing the victim's perspective as a crucial component of the legal protection system. Until now, the handling of sexual violence cases has been more focused on formal evidence, without considering the victim's recovery. In the investigation of sexual violence at universities conducted by the PPKS Task Force, the statements of the victim and the perpetrator are taken at separate times and locations, with the aim of protecting the victim. Thus,

di Kediri: Tinjauan dari Perspektif Hukum Philipus M. Hadjon." *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 7, no. 2 (2025): 1-8

³⁵ Sabbaha, Ahmad Maulana. "Analisis Yuridis Terhadap Perlindungan Hukum Bagi Para Penyintas Kekerasan Seksual Berdasarkan Surat Keputusan Rektor Uin Malang Nomor 1469 Tahun 2021 Perspektif Philipus M. Hadjon." *LoroNG: Media Pengkajian Sosial Budaya* 11, no. 2 (2022): 1-10.

³⁵Kusuma, Yufi Tania. "Perlindungan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual Di Perguruan Tinggi." *Jurnal Legisla* 15, no. 1 (2023): 1-13.

it can be concluded that through these regulations and rulings, there is an effort to establish a more progressive approach by positioning the victim as a subject whose rights must be protected psychologically, socially, and academically. Thus, Ministry of Education, Culture, Research, and Technology Regulation No. 30 of 2021, reinforced by Supreme Court Decision No. 34 P/HUM/2022, can be understood as an implementation of Philipus M. Hadjon's theory of legal protection, as this regulation incorporates both preventive and repressive legal protection mechanisms simultaneously. Meanwhile, Supreme Court Decision No. 34 P/HUM/2022 can be understood as a reinforcement of the legitimacy of such legal protection. This regulation emphasizes that legal protection is not only emphasized for victims, but also perpetrators and witnesses.³⁶

IV. Conclusion

The rise in cases of sexual violence at universities has become a serious issue in the history of higher education institutions. Universities, which are supposed to provide a safe space for students, have instead become one of the places with the highest incidence of sexual violence, with one of the contributing factors being the unequal power dynamic between victims and perpetrators. The issuance of Regulation of the Minister of Education, Culture, Research, Technology, and Higher Education No. 31 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education Institutions represents a strategic effort to prevent and address the rising incidence of sexual violence within the

³⁶ Bediona, Kornelis, Muhamad Rafly Falah Herliansyah, Randi Hilman Nurjaman, and Dzulfikri Syarifuddin. "Analisis Teori Perlindungan Hukum Menurut Philipus M Hadjon Dalam Kaitannya Dengan Pemberian Hukuman Kebiri Terhadap Pelaku Kejahatan Seksual." *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 2, no. 01 (2024).

higher education sector. This regulation serves as a legal framework providing protection for victims and other members of the academic community in preventing sexual violence in higher education institutions, especially since, at the time of its enactment, Indonesia did not yet have a law specifically addressing the handling of sexual violence. At that time, a draft law on criminal acts of sexual violence was under discussion in the House of Representatives.

However, the existence of this regulation sparked both support and opposition within the public. One group opposing the regulation is the Minangkabau Customary Council (LKAAM) of West Sumatra, which subsequently filed a petition for a judicial review of the regulation with the Supreme Court under Case Registration Number 34P/HUM/2022. The petition was filed because the petitioners believe that several provisions in Ministerial Regulation No. 31 of 2021 on the Prevention and Handling of Sexual Violence are inconsistent and contrary to higher-ranking laws and regulations, particularly Article 5, Paragraph 2, regarding the categorization of sexual violence in higher education institutions. Furthermore, the petitioners argued that the provision contradicts the moral values, social norms, religion, and culture of the Indonesian people.

In response to this judicial review, a civil society coalition comprising several NGOs along with the National Commission on Violence Against Women (Komnas Perempuan) served as *Amicus Curiae* to support the validity of Ministerial Regulation No. 31 of 2021 and refute the petitioners' main claims. In its ruling, the Supreme Court also dismissed the petitioner's lawsuit through Decision No. 34P/HUM/2022. This Supreme Court decision is viewed as an effort to strengthen the legitimacy of Ministerial Regulation No. 30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education Institutions.

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