

ABSTRACT

Sexual harassment cases in Indonesia continue to rise and involve various groups, including persons with disabilities who may be both victims and perpetrators. This situation raises legal challenges concerning criminal liability. This study analyzes the application of retributivist theory in determining sentencing justice for persons with disabilities as perpetrators of sexual harassment.

The research adopts a reflective philosophical approach. In the analysis phase, the author employs methodological elements such as description, interpretation, internal coherence, holism, historical continuity, and reflection. In addition, the study compares several similar cases at both national and international levels to identify sentencing disparities toward persons with disabilities as perpetrators of sexual harassment.

The findings reveal that: first, the Criminal Code (KUHP), the Disability Act, and the Sexual Violence Crime Act (UU TPKS) are not yet integrated, resulting in legal uncertainty and potential disparities in sentencing. Second, moral justifications for punishment of persons with disabilities are complex; however, if the elements of mens rea and actus reus are fulfilled, punishment is morally justifiable. Third, retributivist analysis emphasizes punishment as a form of justice, but in the context of disability, a balance is needed between justice for the victim and rehabilitation of the perpetrator. Therefore, legal reform is necessary to ensure a fairer and more appropriate sentencing process.

Keywords: *Criminal Punishment, Disparity, Persons with Disabilities, Retributivism, Sexual Harassment,*

INTISARI

Kasus pelecehan seksual di Indonesia terus meningkat dan melibatkan berbagai kalangan, termasuk penyandang disabilitas yang dapat menjadi korban maupun pelaku. Kondisi ini menimbulkan tantangan hukum terkait pertanggungjawaban pidana. Penelitian ini menganalisis penerapan teori retributivisme dalam menentukan keadilan pidana bagi penyandang disabilitas sebagai pelaku pelecehan seksual.

Metode penelitian ini menggunakan pendekatan reflektif filosofis. Pada tahap analisis, penulis menggunakan unsur metodis seperti deskripsi, interpretasi, koherensi intern, holistika, kesinambungan historis, dan refleksi. Selain itu, dilakukan perbandingan dengan beberapa kasus serupa di tingkat nasional dan internasional untuk mengidentifikasi disparitas pidana terhadap penyandang disabilitas sebagai pelaku pelecehan seksual.

Hasil penelitian menunjukkan bahwa: pertama, KUHP, UU Disabilitas, dan UU TPKS belum saling terintegrasi, sehingga menimbulkan ketidakpastian hukum dan potensi disparitas dalam pidana. Kedua, kajian justifikasi moral hukuman bagi penyandang disabilitas menunjukkan kompleksitas, namun jika unsur *mens rea* dan *actus reus* terpenuhi, maka hukuman secara moral layak diberikan. Ketiga, analisis retributivisme menekankan hukuman sebagai keadilan, namun pada penyandang disabilitas perlu keseimbangan antara keadilan bagi korban dan rehabilitasi pelaku. Oleh sebab itu, diperlukan reformasi hukum agar pidana lebih adil dan tepat.

Kata Kunci: Disparitas, pelecehan seksual, penyandang disabilitas, pidana, retributivisme.

