

Comparison Of Criminal Sanctions Against Sexual Harassers In Indonesia And Malaysia

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Abstract

State on sexual harassment. This article uses normative research methods with a legislative approach and a comparative approach to the laws of Indonesia and Malaysia. Based on the results of the analysis conducted by the state of Indonesia and Malaysia have similarities in defining sexual harassment. Sexual harassment is part of sexual violence in the form of sexual acts through physical and non-physical touch with the target sexual organs or sexuality of the victim. Sexual harassment through physical touch in the form of poking or touching parts of the body. Sexual harassment in Indonesia is regulated by Law Number 12 of 2022 concerning the crime of sexual violence, while the criminal law on sexual harassment in Malaysia is regulated by the Anti-Sexual Harassment Law 2022. The threat of punishment for perpetrators of sexual violence in Indonesia is the highest 12 (twelve years) and/ or a maximum fine of Rp300, 000, 000.00 (three hundred million rupiah). While the threat of punishment for perpetrators of sexual violence in Malaysia is the highest 10 years or a fine or both.

Keywords: Comparison of criminal sanctions, criminal acts of sexual harassment Indonesia and Malaysia

1. INTRODUCTION

Sexual harassment is part of sexual violence. Sexual assault is broader in scope than sexual harassment. Sexual harassment is any form of behavior with a sexual connotation that is carried out unilaterally and is not expected by the target person to cause negative reactions: shame, anger, offense and so on in the person who is the victim of harassment. Meanwhile, violence according to the World Health Organization (WHO), has a definition that is as any behavior that is carried out by targeting one's sexuality or sexual organs without consent, with elements of coercion, or threats. These include the trafficking of women for sexual purposes, to the coercion of prostitution.

Sexual harassment can happen to anyone and can happen anywhere.. Sexual harassers are not only men but can also be women. While the victims can be women, the elderly and children, but the victims are often mostly women and children. Sexual harassment can occur in various places, on the street, shopping center, in the work environment, in the neighborhood where you live, even in the school environment.

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According to Rubenstein, sexual harassment is defined as the nature of unwanted sexual acts or acts that are based on sex and can offend the victim. According to Winarsunu, sexual harassment is any form of behavior with sexual connotations that is carried out unilaterally and is not desired by the victim. Its forms can be speech, writing, symbols, gestures and actions that have sexual connotations.

Regarding the issue of sexual harassment, the state of Indonesia has provided a form of protection for victims and provides rights and services for recovery, as mandated in regulations and laws. In Indonesia, the problem of sexual harassment is regulated in Law Number 12 of 2022 concerning criminal acts of Sexual Violence (Law No. 12 of 2022 TPKS). In law No. 12 of 2022 TPKS sexual harassment includes part of sexual violence. Article 4 of Law No. 12 of 2022 TPKS states that there are 9 (nine) types and forms of sexual violence, namely,

1. Nonphysical Sexual Harassment;
2. Physical Sexual Abuse
3. Contraceptive Imposition;
4. Forced Sterilization;
5. Coercion Of Marriage;
6. Sexual Torture;
7. Sexual Exploitation;
8. Sexual Slavery; And
9. Electronic-Based Sexual Violence

Based on the results of a survey by the Coalition for Safe Public Spaces (KRPA), during 2018 there were as many as 46.80 percent of respondents admitted to having experienced sexual harassment on public transportation. The Data was taken from 62,224 respondents. Public transport (15.77 percent) was the second highest location for harassment, after public roads (28.22 percent). The modes of public transportation that reported harassment between Iain were bus (35.80 percent), angkot (29.49 percent), KRL(18.14 percent). online motorcycle taxi (4.79 percent), and conventional motorcycle taxi (4.27 percent). In the results of the survey, female respondents reported harassment on the bus (35.45 percent), angkot (30.01 percent), and KRL (17.79 percent). Meanwhile, male respondents who also experienced sexual harassment on buses (42.89 percent), KRL (24.86 percent), and angkot (19.65 percent). Frequent harassment on public transport comes in verbal form, followed by nonverbal or physical. The forms are quite diverse, namely whistling or suitan (5392 people), kissing sounds, comments on the body (3628), flirting (3325), touched or grabbed (1826), racist comments (1753), approached aggressively and constantly (1445), rubbed with genitals (1411), followed or stalked (1215), vulgar gestures (1209), kissing sounds (1001), displayed public masturbation (964), being

confronted (623), being shown sex (35), being secretly photographed (11), and being spied on (7).

Sexual harassment cases not only occur in Indonesia, but also occur in many countries, including in Malaysia. More than 57 per cent of Malaysian women experience sexual harassment on a regular basis while walking the streets. A total of 22 percent of respondents said that they were most often verbally abused while walking on the streets. In a Twitter thread, Cent-GPS shared some preliminary results of a survey conducted between August 24-September 15, 2021 with 1,056 women aged 18 to 30 in the country as participants. The results also stated that 68 percent of respondents said they did not feel safe driving alone at night. Another 44 percent said they had experience with teachers making sexual jokes. This was revealed based on a survey conducted by the Center for Governance and Political Studies (Cent-GPS). The institution is working with the All Women's Action Society (Awam), reported by The Star, Wednesday (22/9/2021).

Indonesia and Malaysia are neighboring countries, even based on historical facts Indonesia and Malaysia are cognates. But the legal systems adopted by the two countries are different. Malaysia adheres to the Anglo Saxon legal system or also referred to as Common Law while Indonesia adheres to the continental European legal system (civil law system), even adheres to three systems, namely the civil law system, customary law system, and Islamic law system. The difference in the legal system of the two neighboring countries is because Indonesia is motivated by the influence of Dutch state power while Malaysia is due to the influence of British state power.

The problem formulation of the comparison paper of criminal sanctions against perpetrators of sexual violence in Indonesia and Malaysia is, how to compare the similarities and differences of criminal sanctions against perpetrators of sexual violence between Indonesia and Malaysia.

2. RESEARCH METHOD

The research method used is normative research method, namely by examining the legal norms regarding the law of sexual violence in Indonesia and Malaysia. In this case, the research used is a study by comparing the laws between countries. In this comparing the similarities and differences of criminal sanctions against perpetrators of sexual violence in terms of the laws of Indonesia and Malaysia.

3. RESULT AND ANALYSIS

Cases of sexual harassment that occurred in Indonesia turned out to be almost similar to cases of sexual harassment that occurred in Malaysia. Sexual harassment that occurs in Indonesia in nonphysical or physical form

and occurs in the real or cyber world, in the personal or public sphere, is exactly the same as what happens in neighboring Malaysia.

The crime of sexual harassment in Indonesia is regulated in Law Number 12 of 2022 concerning the crime of Sexual Violence (Law No. 12 of 2022 TPKS). While the crime of sexual harassment in Malaysia is regulated in the Anti Sexual Harassment Act 2022 (Laws of Malaysia Act 840 - Anti Sexual Harassment act 2022). Although the legal systems of Indonesia and Malaysia are different, some of the legal rules regarding sexual harassment in the two countries are not much different. This can be seen from the definition (definition) of sexual harassment, berikut below:

Indonesia	Malaysia
Sexual harassment" means any unwanted behavior of a sexual nature, of any kind, whether verbal, non-verbal, visual, gestural or physical, directed at a person who reasonably offends or humiliates or constitutes a threat to his well-being (Article 5 of law no. 12 year 2022)	Any person who engages in nonphysical sexual acts directed against the body, sexual desire and/or reproductive organs with the intention of degrading the dignity and dignity of a person based on their sexuality and / or morality (Anti-Sexual Harassment Act 2022)

UU No. 12 of 2022 TPKS and the Anti Sexual Harassment Law 2022 (Laws of Malaysia Act 840 - Anti Sexual Harassment act 2022) both define sexual harassment as crimes directed against the body and committed physically or non-physically by degrading the dignity and dignity of a person. Article 5 of Law No. 12 of 2022 which explains, "what is meant by"non-physical sexual acts are inappropriate statements, gestures, or activities that lead to sexuality by degrading or humiliating". Uniquely, the sexual violence law, especially sexual harassment, was only accommodated in 2022.

The provision of criminal threats to sexual harassers in Malaysia both physically and non-physically is regulated in Article 354, 355, 377D and Article 509 of the Malaysian criminal code, or as follows :

Seksyen	Istilah Undang-Undang	Hukuman
354	Molestation (attacking or using criminal force on a person with the intention of molesting his honor).	A maximum of 10 years ' imprisonment or a fine or whipping or any two of those penalties.

355	Assault or use criminal force on a person with the intent to dishonor him unless urged to do so by a serious outburst of anger.	Maximum imprisonment of 2 years or a fine or both.
377D	Violate decency.	Maximum imprisonment of 2 years.
509	Words or gestures with the intention of humiliating someone's honor.	Maximum imprisonment of 5 years or a fine or both.

From the exposure above we can see, the Penal Code of sexual harassment physically and with intent / intent in Malaysia is regulated in Section 354 of the Anti Sexual Harassment Act 2022, which states, “Whoever assaults or uses criminal force on a person, with the intent to anger or knowing that he is likely to anger the decency of that person, shall be punished by imprisonment for a term which may be extended to ten years or by fine or by flogging or by two such sentences”.The Anti-Sexual Harassment Law 2022 does not distinguish whether the act of sexual harassment has been committed or not/intent.

The threat of criminal law sexual harassment in Indonesia is divided into two, namely physical sexual harassment and non-physical sexual harassment. Criminal threats to perpetrators of sexual harassment are regulated in Article 6 of Law No. 12 year 2022 tpks that mention, Convicted of physical sexual abuse:

1. Any person who commits ftsik sexual acts directed against the body, sexual desire, and/ or reproductive organs with the intention of degrading the dignity and dignity of a person based on his sexuality and/or morality which is not included in other more severe criminal provisions with a maximum imprisonment of 4 (four) years and/ or a maximum fine of IDR 50,000,000.00 (fifty million rupiah).
2. Any person who commits physical sexual acts directed against the body, sexual desire, and/ or reproductive organs with the intention of placing someone under his control unlawfully, both inside and outside of marriage with a maximum imprisonment of 12 (twelve) years and/ or a maximum fine of Rp300, 000, 000, 00 (three hundred million rupiah).

While the threat of criminal acts for perpetrators of non-physical sexual harassment in Malaysia is regulated in Section 355 Laws Of Malaysia Act 840 - The Anti Sexual Harassment act 2022 (Anti Sexual Harassment Act 2022) provides for criminal assault or force with intent to defame a person, other than on grave provocation, stating, “whosoever assaults or uses criminal force on a person, with intent to defame that person, other than on

serious and sudden provocation given by that person, shall be punished with imprisonment for a term which may be extended to two years or with a fine or with both”.

Then Section 377D (Laws of Malaysia Act 840 - Anti Sexual Harassment act 2022 regulates the offence of modesty, which states, “Any person who, in public or private, commits, or conspires to commit, or obtains or attempts to obtain the commission by any person of, an act of indecency with another person, shall be punished with imprisonment for a term which may be extended to two years”.

While Section 509 of the Laws of Malaysia Act 840 - Anti Sexual Harassment act 2022 regulates words or gestures with the intention of humiliating someone's honor, which states, . Any person, intending to insult the decency of a person, say any word, make any sound or movement, or point out any object, with the intention that the word or sound will be heard, or that the movement or object will be seen by the person, or interfere with the privacy of the person, shall be punished with imprisonment for a term that may be extended to five years or with a fine or both.

While non-physical sexual harassment in Indonesia is regulated in Article 5 of law no. 12 of 2022, which states that everyone who commits nonphysical sexual acts directed against the body, sexual desire, and/or reproductive organs with the intention of degrading the dignity and dignity of a person based on his sexuality and/or morality, will be punished for nonphysical sexual harassment, with a maximum imprisonment of 9 (nine) months and/ or a maximum fine of IDR 10,000,000.00 (ten million rupiah).

4. CONCLUSION

Sexual harassment is part of sexual violence, the difference is that the scope of sexual violence is wider than sexual harassment. The definition of sexual harassment in Indonesia and Malaysia both define sexual harassment as a crime directed against the body and committed physically or non-physically by degrading the dignity of a person. Sexual harassment consists of physical sexual harassment and non-physical harassment. The threat of punishment for perpetrators of physical sexual violence in Indonesia is at most 12 (twelve years) and/ or a maximum fine of Rp300, 000, 000.00 (three hundred million rupiah). While the threat of punishment against perpetrators of nonphysical sexual violence shall be punished by imprisonment for a maximum of 9 (nine) months and/ or a maximum fine of Rp10, 000, 000.00 (ten million rupiah). In Malaysia, the maximum penalty for a perpetrator of physical sexual violence is imprisonment of 10 years or a fine or whipping or any two of those sentences (or both). While the threat of punishment against perpetrators of non-physical sexual violence shall be

punished with a maximum imprisonment of 5 years or a fine or both
Localization of gambling is one of the sources of the emergence.

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