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REGULATION AND IMPLEMENTATION OF NATIONALITY PRINCIPLES FOR RAPE AND SEXUAL ASSAULT ABOARD

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Abstract

Sexual violence is an unwanted sexual behavior, such as a request to have sexual intercourse and other sexual behaviors by verbal and physical violence. The problem in this study is how is the legal regulation of rape and sexual assault in Indonesia? and How is the implementation of active national principles for rape and sexual assault crimes that occur abroad? The research method used in this research is normative research method, by examining legal problems using existing literature materials. This study will analyze the legal arrangements for perpetrators of rape and sexual assault crimes to the implementation of the principle of nationality for perpetrators of rape and sexual assault crimes that occur abroad. The conclusion in this study is that there needs to be an expansion in the Draft KUHP in regulating criminal acts of immorality, especially rapes committed similarly, both carried out by men and women and the application of the principle of personality both active and passive can be given by the state if the crime is related to the interests of the state, and the existence of bilateral agreements between the two countries so that legal diplomacy can run smoothly until it gets the best way out.

Keywords: *Legal Regulation; Rape, Sexual Assault; Nationality Principles.*

I. INTRODUCTION

Sexual problems are still taboo in Indonesian society. Society is like closing a conversation about sexuality, even though the discussion is only in the context of gender, such as inequality between men and women.¹ This is because Indonesian society still adheres to the patriarchy cultural system, which is a culture that has a perspective on the role of men who dominate the social, religious, economic, political and cultural systems, so that the role of women becomes neglected.²

¹ T.R.Budiwati. 2011. *Representasi Wacana Gender dalam Ungkapan Berbahasa Indonesia dan Bahasa Inggris :Analisis Wacana Kritis*, Journal of Kawistara Vol.1 No.3. p.298-320. (Doi: <https://doi.org/10.22146/kawistara.3926>)

²A. Purwanti. 2017. *Protection and Rehabilitation for Women Victims of Violence according to Indonesian Law (Study on Central Java Government's handling through KPK2BGA)*, Journal of Diponegoro Law Review, Vol 2 No.2,Semarang, p.312-325 (Doi: <https://doi.org/10.14710/dilrev.2.2.2017.68-81>)

The discourse on sexual issues should not be taboo anymore, given the number of cases of sexual violence that occur until the discussion on sexual orientation. Please note that sexual orientation and sexual violence are both different things. Sexual orientation is a pattern of attraction, emotionally as well as sexuality towards a particular gender.³ Sexual violence is an unwanted sexual behavior, such as a request to have sexual intercourse and other sexual behaviors by verbal and physical violence.⁴

Cases of sexual crimes reported by the National Commission Women, stated that there are more than a thousand cases of sexual violence. In this case, it can be known that the perpetrator is a heterosexual man whose victims are mostly stepchildren, disciples, nephews and worse the victim is the perpetrator's biological child. Rape crimes in Indonesia are already regulated in the Criminal Code, although the law in Indonesia has not fully discussed the crime of rape as a whole, where rape is not seen as control over the body.

For the most part, Indonesians consider rape cases to be an acknowledgment of men's passions as perpetrators and the faults of women who do not wear reasonable or closed clothes, which provokes male lust. The framing of the preaching of men as perpetrators of sexual crimes and legal indecisiveness towards rape perpetrators indicates that Indonesia is still thick with patriarchy culture of supremacy.⁵

Today, rape crimes do not only occur between men and women, but can occur within the homosexual sphere. For example, we can see the news about Indonesian citizens who are perpetrators of rape in the UK. As the case unraveled, the British media continued to discuss rape cases and reveal the identity of the perpetrators to the public, while what happened in Indonesia was only news about sexual orientation as the cause of the rape. This becomes a discourse of the media can be biased against the culture of the country, that the people of Indonesia reject the existence of deviant behavior on sexual orientation.⁶

³A. Rahadian. 2019. *Sosiologi Menjawab: Gender, Seks & Orientasi Seksual*. Retrieved from: <https://medium.com/@ariefism/sosiologi-menjawab-gender-seks-dan-orientasi-seksual-7c4adbf85cc7>

⁴L. Sujadmi and Herdiyanti. 2018. *Upaya Pencegahan Sexual Violence pada Remaja Sekolah di Merawang Kabupaten Bangka*, Journal of Society, Vol.6 No.2 p. 51-57 (Doi: <https://doi.org/10.33019/society.v6i2.69>)

⁵S.O.Ademiluka. 2018. *Patriarchy and Women Abuse: Perspective from Ancient Israel and Africa*. Journal OTE, Vol.31 No.2. p. 339-362. (Doi: <https://doi.org/10.17159/2312-3621/2018/v31n2a5>)

⁶J.P. Gee. 1999. *An Introduction to Discourse Analysis: Theory and Method*. London and New York, Routledge, p.199.

Today, rape crimes do not only occur between men and women, but can occur within the homosexual sphere. For example, we can see the news about Indonesian citizens who are perpetrators of rape in the UK. As the case unraveled, the British media continued to discuss rape cases and reveal the identity of the perpetrators to the public, while what happened in Indonesia was only news about sexual orientation as the cause of the rape. This becomes a discourse of the media can be biased against the culture of the country, that the people of Indonesia reject the existence of deviant behavior on sexual orientation.⁷

From the explanation above, it can be noted that the law in Indonesia has not fully supported the victims. The reform of the law aims to prevent the occurrence of sexual violence events, develop and implement the treatment, protection, and recovery of victims by involving the community, and provide severe criminality for perpetrators of sexual violence so that there is justice for victims of sexual crimes. So the need for special legal arrangements for perpetrators of rape crimes both homosexual and heterosexual in Indonesia.

The research method used in this research is normative research method, namely legal research that puts the law as a norm system building, namely on the principle of law, norms, rule of law, court decisions, agreements and doctrines.⁸ The research was conducted by examining legal problems using existing literature materials.⁹ This study will analyze the legal arrangements for perpetrators of rape and sexual assault crimes to the implementation of the principle of nationality for perpetrators of rape and sexual assault crimes that occur abroad.

Based on the background above, the problems in this study are:

1. What is the legal regulation of perpetrators of rape and sexual assault in Indonesia?
2. How is the implementation of active national principles for perpetrators of rape and sexual assault crimes that occur abroad?

⁷Nikodemus Niki and Alfin Dwi Rahmawan. 2020. *Supremasi Patriaki :Reaksi Masyarakat Indonesia dalam Menyikapi Narasi Seksualitas dan Perkosaan Kasus Reynhard Sinaga*, Journal Analisa Sosiologi, Vol.9 No.1 p. 143.

⁸Mukti Fajar ND dan Yulianto Achmad. 2017. *Dualisme Penelitian Hukum Normatif dan Empiris*. Pustaka Pelajar, Yogyakarta, p.34.

⁹Soerjono Soekanto. 2009. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, p.13.

II. DISCUSSION

Legal Regulation of Perpetrators of Rape and Sexual Assault In Indonesia

Sexual orientation can be distinguished into several types, namely Lesbian, Gay, Bisexual and Transgender. Lesbian is a term for women who like same-sex women, while Gay is a special designation for men whose orientation is sex same-sex men, while Bisexual is a term for people who are interested in men as well as women, and Transgender is a person who looks, behaves and changes his gender so that it is no longer in accordance with the original.¹⁰ Indonesia is a country that rejects LGBT, although same-sex sexual orientation is inevitable in the association of Indonesian society, although some have openly acknowledged and some are still shutting themselves down.

Relationships between two individuals are not always a good relationship, but there can be violence and crime even in sexual intercourse, which usually occurs both verbally and physically. Sexual crimes are crimes that harass and tarnish the dignity of humanity that is generally accompanied by violence. Sexual crimes usually occur due to misperceptions between the perpetrator and the victim in which they have a special relationship (both personal and romantic) and the perpetrator who cannot control his emotions.¹¹

Sexual crimes do not only occur in heterosexual relationships, LGBT actors also do not deny the presence of violence and sexual crimes in their personal relationships. Sexual crimes that are prevalent in society are crimes of rape. For example, a few years ago, Indonesian society was shocked by the news about the murder by mutilation of his lover, the murder was carried out by Ryan, someone who has a perversion of sexual orientation that is gay whose motive is jealousy and seizing the victim's property.¹²

In the early 2020s, Indonesia was again in the world spotlight with the news of rape crimes committed by a Doctoral Student in Munchester, who is an Indonesian citizen. The perpetrator is ReynhardSinaga. The perpetrator committed rape and was arrested in 2017, until early 2020 the perpetrator was found guilty of premeditated rape. The judge found the offender guilty of 159 counts of rape and sexual assault against 48 men in the UK and sentenced him to life imprisonment.¹³

¹⁰Yuliati Iswandiari.2017. *Apa itu LGBT? Apa Penyebab Seseorang Menjadi Gay?*, URL: <https://helohehat.com/hidup-sehat/seks-asmara/apa-itu-lgbtadalah-penyebab/>

¹¹Abdul Wahid dan Muhammad Irfan. 2001. *Perlindungan Hukum Terhadap Korban Kekerasan Seksual*, Rafika Aditama, Bandung, p. 48

¹²<https://www.antaraneews.com/berita/111431/mengapa-ryan-membunuh>

¹³Peter Jeremiah Setiawan. 2020. *Kasus Reynhard Sinada dan Media Blockout*, Lab Hukum Universitas Surabaya,Surabaya,p. 1

Reynhard Sinaga's case came up and became an interesting conversation among Indonesians. However, Indonesians are more interested in the coverage of their sexual orientation than the perpetrators, namely acts of rape or sexual violence. Thus, the preaching of sexual violence becomes blurred and society finds it difficult to distinguish the concept between sexual violence and sexual orientation.

The State of Indonesia is a country based on the Law, this is in accordance with Article 1 Paragraph (1) of the Constitution of the Republic of Indonesia year 1945. Based on these provisions, there is a guarantee for the public to behave and behave according to the prevailing rule of law in Indonesia. One of the underlying principles is the principle of legality, namely *nullum delictum no elapoenam sine praevia lege poenali* which means that no action can be punished without any applicable rules.

Sexual crimes which in this case are rapes, are regulated in the Criminal Code. However, what is stipulated in Article 285 of the Criminal Code is only the crime of heterosexual rape, namely perpetrators and victims of different sexes. Usually, it is found in male perpetrators and the victim is female. According to Article 285 of the Criminal Code, it is stated that rape is a sexual relationship committed by force or threat of violence in which the victim is a woman who is not in a marital relationship. Whereas in Article 292, sexual crimes are if an adult commits an obscene act with another person of his or her sex, but it is known that the victim is allegedly still included in the scope of the child.

Article 285 of the Penal Code states that anyone with violence or threats of violence forcing a woman to have sex with him outside of marriage, is threatened with rape with a prison sentence of twelve years. So Article 285 of the Criminal Code has the following elements:

1. Whoever is the subject of a crime here is any person, which is usually done by men.
2. With violence or threats of violence, namely acts that use force against others so as to bring harm to the threatened party, in general the violence committed by the perpetrator of rape is physical violence¹⁴ and also verbal violence.¹⁵
3. By force, the act done by the perpetrator is done by pressing his desire, so that the victim follows his wishes.
4. A woman. In this element the victim is a woman, both an adult woman, and a child who is forced to be unable to fight the perpetrator and ultimately commits an act of sexual intercourse.¹⁶

¹⁴Suzie Sugijokanto. 2014. *Perlindungan Terhadap Anak dan Perempuan*, Raja Grafindo Persada, Jakarta, p.32

¹⁵*Ibid.* p.40.

5. Intercourse outside marriage, which is the main requirement of rape is that the perpetrator commits sexual intercourse, namely the entry of a man's penis into the penis of a woman with threats of violence.

Furthermore, other rapes stipulated in Article 292 of the Criminal Code, i.e. adults who commit lewd acts with other same-sex people, who are known or should be suspected of being immature, are threatened with imprisonment of a maximum of five years. So that the elements contained in Article 292 of the Criminal Code are:

1. Committing obscene acts, i.e. heinous, dirty, indecent, indecency and decency.¹⁷
2. Same-sex couples, i.e. having a feeling of lust in someone of the same sex.¹⁸ Same-sex or homosexual comes from the word homo meaning the same and sex meaning gender.¹⁹
3. Performed against immature people, which in this case means the child. The child in Article 1 number 1 of Law Number 35 Year 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection states that the child is a person who is not yet 18 years old.²⁰

If the two chapters are examined more thoroughly about the elements contained in them, then it can be known that rape is carried out without a common will, imposed by the perpetrator against the victim with physical and/or psychological threats, violence, in a state of unconsciousness, even this can happen to a child or person who is experiencing raw retardation, and does not know what happened to him. Perpetrators of sexual violence have a high sense of anger, a desire to master and even paralyze opponents/victims who are more dominant than their own sexual desires. This arose feeling manifested by the perpetrator in an act of sexual aggression.²¹

Indonesia does not provide support for homosexuals, so criminal acts involving homosexual perpetrators cannot be considered criminal acts. This returns to the basic provisions of legality. The Penal Code has not explicitly regulated homosexual rape perpetrators with adult victims. Indonesia only regulates gender identity or sexual orientation between men and women, this is affirmed in Law No. 1 of 1974 on Marriage.

¹⁶Abdul Wahid dan Muhammad Irfan.*Op.Cit.*p.45.

¹⁷Wirah Aryoso dan Syaiful Hermawan. 2013. *Kamus Pintar Bahasa Indonesia*, Pustaka Makmur, Sidoarjo,p.97.

¹⁸*Ibid.* p.268.

¹⁹*Ibid.* p.524

²⁰Suhasril. 2016. *Perlindungan Terhadap Anak Dan Perempuan*, Raja Grafindo Persada, Jakarta,p.32

²¹*Ibid*

The absence of the rule of law or legality about crimes involving homosexuals, makes homosexual rape victims have a physical and psychological impact. In addition, victims cannot report the perpetrator's crimes to law enforcement, as this is not regulated in law. Victims will also feel treated discriminatorily and unfairly, and it appears that the handling of rape and sexual assault perpetrators is not serious.²²so that the rules of criminalization for perpetrators of same-sex sexual orientation rape are required.

The formulation of legislation must be easy to understand and accountable. This is after the function of criminal law in developing society, namely to develop new laws, strengthen existing laws and clarify the scope and function of the existing laws.²³ Based on this function, Indonesia also regulates rape crimes in the RKUHP.

The crime of rape in the RKUHP is contained in Article 491, namely:

- (1) Shall be penalized for the crime of rape, with a prison sentence of at least 3 (three) years and a maximum of 12 (twelve) years:
 - a. men who have intercourse with women outside of marriage, contrary to the will or without the consent of the woman;
 - b. a man who has intercourse with a woman, with the consent of the woman, but such consent is reached through threats to be killed or injured;
 - c. a man who has sexual intercourse with a woman, with the consent of the woman because the woman believes that the man is her lawful husband.;
 - d. men who have sexual intercourse with women under the age of 18 (eighteen) years, with their consent;
 - e. men who have intercourse with women, when it is known that the woman is unconscious or helpless;
 - f. the male inserts his genitals into the anus or mouth of the female;
 - g. the male inserts an object that is not part of his body into the vagina or anus of the female.
- (2) It is also considered to have committed a crime of rape, if in the circumstances as referred to in paragraph (1)
- (3) If one of the crimes as referred to in paragraphs (1) and (2) results in serious injury, the criminal shall be punished with a maximum imprisonment of 3 (three) years and a maximum of 12 (twelve) years.
- (4) If one of the crimes as referred to in paragraphs (1) and (2) results in the death of a person, the criminal shall be punished with a maximum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years.

²²Abdul Wahid dan Muhammad Irfan.*Op.Cit.* p..82

²³Hermien Haidar Koeswadji. 1995. *Perkembangan Macam Macam Pidana Dalam Rangka Pembangunan Hukum Pidana*, Citra Aditya Bakti, Bandung, p.121

The formulation of Article 491 of the RKUHP is considered not maximum, because it has not regulated the crime of rape committed by homosexuals. This article still governs about rape victims are women. Whereas if we look at the examples of the above cases, men both children and adults also have the potential to be victims of rape, in fact, a woman can also be a perpetrator of rape against the same sex and also the opposite sex.

Daily criminal acts will continue to develop and changes in legislation are expected to accommodate all current and future crimes. The law must move forward, because the law is a human instrument or instrument in the life of society. If the law is not able to keep up with the development of this type of crime then, it is certain that the law will not function in accordance with its purpose, namely providing peace, justice, security, and order in the community.²⁴

As mentioned above, that the Criminal Code adheres to the principle of legality that requires the existence of written rules as a benchmark of one's actions. So that if there is an act of someone who violates the rules to unsettle the community, then a legal reform is needed. The renewal of the law is one way to achieve the maximum legal objectives.²⁵ This is in accordance with the opinion of Hoefnagels, namely how to overcome crime is in an integral and systematic way, namely by creating a balance of efforts to protect the community (social defence) and the welfare of the community (social welfare).²⁶

Studies of rape crimes have been conducted on 120 studies of the prevalence of which it can be concluded that rape occurs in about three percent of men worldwide. Who has data that five to ten percent of men in the world have experienced sexual crimes as children.²⁷ So it can be known, the crime of rape can happen to anyone.

Back in the draft RKUHP formulation that has undergone an expansion, but still has not regulated rapes committed by women against men and rapes committed by the same sex. Therefore, the Indonesian state should make arrangements on sexual crimes committed by women and same-sex sexual crimes accompanied by legal assistance and rehabilitation programs for victims of rape and sexual assaultcrimes and rehabilitation counseling for perpetrators of rape and sexual assaultcrimes.

²⁴Syamsul Fatoni. 2015. *Pembaruan Sistem Pemidanaan Prespektif Teoritis, Dan Pragmatis Untuk Keadilan*, Setara Pers, Malang, p.111

²⁵*Ibid.* p.16

²⁶*Ibid.*p.20.

²⁷www.Republika.co.id

Implementation Of Personality Principles On Perpetrators Of Rape and Sexual Assault Crimes That Occur Abroad

In the early 2020s there were cases of rape and sexual assault in the UK, where the perpetrator was an Indonesian who was studying doctoral at one of Manchester's universities named Reynhard Sinaga. The case became the subject of international discussion, where male offenders raped more than a hundred men using GHB anaesthetic and were reported by victims in 2017 and sentenced to life imprisonment.

The State of Indonesia is a country with a system of civil law, where in its rule of law adheres to the principle of legality. As discussed in the first discussion, that the principle of legality is a rule of law where the law will not apply to criminal acts in the period before the rule was made. That as we can know, Indonesia does not yet have any legislation governing the crime of same-sex rape.

The criminal offence of rape regulated in the Penal Code is about sexual violence that compels a woman to have sex, as set forth in Article 285. So in the case of Reynhard Sinaga, he will be freed by Article 285 of the Criminal Code. The burden of proof in the case of Reynhard Sinaga can be done through *visum et repertum* where the proof of violence is the presence of wounds in the area attacked, but we can know again that Reynhard Sinaga committed rape by drugging the victim or date rape with GHB so that the evidence of violence can not be proven. Even the possession of GHB which is illegal drugs is also not in the narcotics and psychotropic legislation in Indonesia.

If Reynhard Sinaga's case is revealed in Indonesia, it is certain that the maximum sentence imposed is not more than 9 years. In granting this verdict, will look at Article 64 of the Criminal Code, which contains elements of the togetherness of some criminal acts whose maximum criminal maximum is the heaviest criminal maximum plus one-third. This accumulated is also called *realist concursus*.

A very different verdict than the English court's ruling. The British sentenced Reynhard Sinaga to life imprisonment because of a different British legal system than Indonesia. Where judges can make the rule of law without a legislative process. The Manchester court judge's attempt to convict Reynhard Sinaga was the court's authority.

An Indonesian citizen within himself will be attached to the principle of personality, namely the legal principles contained in Article 5 of the Criminal Code, which is the provision of Indonesian criminal law that applies to all Indonesian

citizens who commit crimes outside the territory of the Indonesian state. This principle relates to the activeness of a person in relation to the crime of a citizen.

The explanation of the principle of active personality or nationality is stated in the explanation of the Criminal Code that Indonesian citizens who commit crimes as stated in Article 5 Sub-1, even if they occur outside Indonesia, may be subject to Indonesian criminal law. If the perpetrator commits another criminal event which by Indonesian law is considered a crime (not an offence), it may only be subject to Indonesian criminal law. In addition, if the act is carried out and regulated by the Law of a Foreign country in which it is committed, it may also be threatened with punishment.²⁸

Andi Hamzah also argued that, the principle of personality is a principle that rests on the nationality of deliberative makers. Indonesian criminal law follows its citizens wherever it is located.²⁹ Article 5 of the Criminal Code is at the core of the principle of personality, which is extended in Article 7 of the Criminal Code that there is an active national and passive national principle (the principle of protection).

The passive national principle is about the enactment of criminal law which is based on the legal interests of a country whose law is violated by a person who is abroad. The legal basis for this principle is that every sovereign state has the right to protect its own legal interests, even if the perpetrator violates the law abroad or the perpetrator is not a citizen but does so in that country.

As an example of this passive national principle is usually people who are abroad and commit criminal acts, will be enforced criminal law based on the locus delicti of the incident, but for some specific crimes, and in the interest of the law of a country, the perpetrator of the crime can be tried by a country whose interests are harmed.³⁰ This is considered a logical thing if the perpetrator of the crime commits a crime abroad and commits a crime against his country. For example, if an Indonesian citizen commits a crime against the Indonesian state, then Indonesian criminal law applies to him/her. This crime is directed against the Indonesian state and is not a crime in that foreign country.³¹

²⁸R. Soesilo. 1991. *Kitab Undang-Undang Hukum Pidana (KUHP) serta komentar-komentarnya Lengkap Pasal Demi Pasal*, Politea, Bogor, p.33.

²⁹Andi Hamzah. 2014. *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, p.72-73

³⁰H.M.R. Arimandan F. Raghil. 2015. *Hukum Pidana*, Setara Press, Malang, p. 49

³¹B.R.Tamaka. 2014. *Pentingnya Tempat Kejadian Perkara Menurut Hukum Pidana Indonesia*, Journal Lex Et Societatis, Vol.2. No.5.p.9

The Criminal Code itself states that not all legal interests can be protected, which can be protected only vital interests related to the public interest, such as :³²

1. Guaranteed state security and guaranteed dignity of the head of state and his deputy;
2. Guaranteed trust in currencies, stamps and brands that have been issued by the Indonesian government from the crime of counterfeiting;
3. Guaranteed trust in debt securities, debt certificates issued by the Government of Indonesia;
4. The guarantee of Indonesian shipping equipment against the possibility of being brought into the power of pirates.

So it can be understood that the interests protected by the state are general and broad and not personal interests.³³

While the principle of active nationality or personality has been used as the basis for the Verdict ma No.140K/Kr.1972,7-6-1978 about Indonesian citizens who are accused of murder in Hongkong and filed a cassation that the Indonesian judge is not authorized to prosecute criminal acts alleged in Hongkong. This reason is declared unacceptable to the court, because the judges of the Courts of the Republic of Indonesia are authorized to adjudicate under Article 5 of the Criminal Code.³⁴

If reviewed on the principle of passive nationality, then this principle demands cooperation between the two countries in dealing with criminal acts. To be able to carry it out, a rule is needed as the legal basis for the implementation of cooperation in the field of criminal law enforcement. The legal basis for the enactment of this cooperation agreement is Law No. 1 of 2006 on Reciprocal Assistance in Criminal Matters, this Law regulates the form of transnational criminal acts.

One of the reciprocal assistance that can be requested by the state to other countries under the Reciprocal Assistance In Criminal Matters Act is to find or identify a person believed to be in a foreign country who is suspected and/or should be suspected of having links to an investigation, prosecution and examination at a court hearing in Indonesia and may provide statements or other assistance in an investigation, prosecution, and examination at a court hearing. However, this law also provides a limitation not to authorize the extradition or surrender of a person, arrest or detention with a view to the extradition or surrender of a person, the transfer of an inmate and the transfer of a case.

³²Teguh Prasetyo. 2016. *Hukum Pidana*, Rajawali Pers,Jakarta,p.43-44

³³*Ibid.*

³⁴Chidir Ali. 1986. *Yurisprudensi Hukum Pidana Indonesia*, Jilid 1. Armico,Bandung,p.61.

In addition to the Reciprocal Assistance Law on Criminal Matters, Indonesia also ratified the International Treaty on Mutual Legal Assistance in Criminal Matters through Law No. 15 of 2008 which is a cooperation in the field of prevention, investigation, prosecution of criminal cases in ASEAN countries. Referring to the principle of active and passive personality, the Government of Indonesia can provide legal protection in accordance with the legal mechanisms applicable in the local country. This effort can be made if the suspects commit crimes jointly and there is an international convention or bilateral agreement between the two.

In the case of rape and sexual assault committed by Reynhard Sinaga, an Indonesian citizen living in the United Kingdom, Indonesia through consular representatives of the Embassy of the Republic of Indonesia in London, provides facilities for meetings between perpetrators and their families and communicates with advocates and ensures a fair trial. Consular Representative of the Embassy of the Republic of Indonesia is also responsible for providing public services related to non-political aspects for suspects. This is based on Article 19 (b) of Law No. 37 of 1999 on Foreign Relations, namely the Indonesian government placing its representatives abroad and opening consular representatives in various countries in the world. In addition to legal assistance provided to suspects, Indonesia also provides the right to diplomacy in resolving legal cases. So that other countries cannot intervene in the ongoing proceedings, because each country is obliged to respect the supremacy of the country's laws. One of the lines of diplomacy conducted by the Government of Indonesia is by consular consultation with the country *locus delicti* the case. The path of diplomacy is dynamic, so anything can happen on the condition that the parties agree.

The path of diplomacy is one of the most effective measures for the state in providing protection to its citizens who are subject to punishment or become suspects. Therefore, the success of this diplomacy can be seen based on the quality of Indonesia's diplomatic relations with the country concerned. In the case of Reynhard Sinaga where the perpetrator is an Indonesian citizen who committed a crime with *locus delicti* in the UK, diplomacy is conducted based on the quality of Diplomatic Relations between Indonesia and the United Kingdom.

III. CONCLUSION

There needs to be an expansion in the Draft RKUHP in regulating criminal acts of immorality, especially rapes committed similarly, both committed by men and women. The personality principles can be given by the state if the crime is related to the interests of the state, and the existence of bilateral agreements between the two countries so that legal diplomacy can run smoothly until it gets the best way out.

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