



Judges' juridical analysis in trying women that are dealing with the law

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Abstract

There is the Supreme Court Ordinance (PERMA) Number 3, 2017 on Trial Guidelines for Women Facing Charges. Women in conflict with the law are defined as women who are victims, perpetrators, and witnesses. The Supreme Court adopts a policy to eradicate gender-based discrimination in the judicial system because women are frequently subjected to it. The purpose of this study is to explain the norms that should be the guidelines for judges in the trial of women facing the law in order to achieve justice and to assess the role of the judge in the implementation of PERMA Number 3, 2017 in the environment of the Supreme Court's judicial institutions. The method employed is juris-normative because a legal void necessitates a comprehensive review of legal norms. The results of the study revealed the guidelines of the judge in the trial of women who are confronted with the law or in conflict with the subject in several chapters, including article 7 of the PERMA Number 3, 2017 judge can denounce a person if in the process of trial examination committed discrimination against women confronted as victims, perpetrators, and witnesses, and the role of judges in the implementation of PERMA Number 3, 2017 influenced the judges' considerations in hi. It is recommended that this guideline be broadly dissocialized to serve as a reference for judges in their treatment of women facing the law.

Keywords: Judges' juridical analysis, trying women's cases, women facing law

Introduction

Women faced with the law are defined as set out in the Supreme Court of the Republic of Indonesia Regulation (later called as the PERMA) Number 3, 2017 on Guidelines for the Trial of Women's Matters Faced with Article 1 of the Law, which states that "women faced by the Law are women who are in conflict with the Law either as victims, witnesses or as perpetrators or as parties to a dispute".

Rules of the PERMA contain some basic principles in the case of women facing the law:

1. Respect for human dignity and dignity;
2. Non-discrimination;
3. Equality before the law;
4. Justice;
5. Utility;
6. Legal certainty.

The judge's guidelines for women facing the law are aimed at:

1. To enable the judges to understand and apply the above principles;
2. To enable them to identify situations of unequal treatment leading to discrimination against women;
3. To guarantee the right of women to equal access to justice.

But in reality, it's still a big task for the judiciary, women facing the law such as cases of sexual harassment or sexual violence from the investigation process to the verdict are often discriminated against. The basis of PERMA Number 3, 2017 is equality before the law and equality of rights. The women's cases facing the law that is most difficult to prove are cases of sexual violence, one of the results of a study conducted by the National Commission against Violence against Women (Women's Chamber) entitled "Building

access to justice for Women victims of sexual abuse; development of the concept of an integrated criminal justice system: handling cases of violence against women. The study states that in the substance component of the law, there are legislative regulations, both material and formal, which tend to persuade women to obtain justice.^[1]

Although there have been legal guarantees that protect women and the emphasis on the obligation of the State to ensure that women have access to justice and to guarantee that women are free from discrimination in the judicial system, in fact achieving equality before the law and access to Justice for women is not an easy thing.^[2]

For a woman in the process of achieving her rights caused by discrimination and negative stereotypes based on gender and gender. Based on these issues, this writing aims to explain what norms should be the guidelines for judges in the trial of cases of women facing the law in order to realize justice and to what extent the role of the judge in the implementation of PERMA Number 3, 2017 in the jurisdiction of the Supreme Court of Justice?

Research Method

The type of research that is used is normative jurisprudence, normative juridical research in which the law is conceived as what is written in the law-in-books or the law as a rule or norm which is a benchmark of human behavior that is considered appropriate.^[3]

Normative law research includes research into the rule of law, research into legal systematics, study into the synchronization of law levels, study of legal history, and comparative law studies.^[4] The reason for using normative research is because there is a legal vacuum and there is a legal contradiction in the substance of the article, and the last is an unclear norm, so it is necessary to study the norm in depth. As for the data collection technique, library

research or study of libraries by collecting journals and other people's research results related to women facing the law.

Results and Discussions

The Judge's Rules in the Judgment of the Woman Facing Legal Cases

A norm is an act that orders or orders a certain behavior, whereas a legal norm is a code of conduct ordered by a competent authority or state. Indonesia adheres to the principle of legality that no act can be punished without a legal basis. It means behavior that can be done if there are norms that govern it.

The norms governing the authority of judicial institutions as stipulated in Article 24 of the 1945 Constitution stated that:

4. The judiciary is the independent authority to organize justice for the enforcement of law and justice.
5. The judicial authority is exercised by a Supreme Court and the judicial bodies below it in the general court, religious court, military court, state-run court, and by Constitutional Court.
6. The other bodies whose functions relate to the jurisdiction are regulated by law.

Law Number 48, 2009 on the authority of the judiciary in Article 2 states that:

7. The courts of the State apply and enforce the law and justice based on the Pancasila.
8. All courts throughout the territory of the Republic of Indonesia are courts governed by the law.
9. Justice is done with simplicity, speed, and low cost.

Law is one of the tools for achieving justice. A variety of rules, conventions, and policies are made and enforced to distribute justice. Article 28 (1) (2) of the Basic Law of 1945 states that "everyone has the right to be free from discriminatory treatment on any grounds and to be protected against acts of discriminatory nature. This article may mean that no one shall be discriminated against on any basis such as race, ethnicity, religion, gender, or gender.

One of the foundations for the birth of this PERMA is Article 28 I para. (2), the International Covenant on Civil and Political Rights and the CEDAW Convention. (Convention on the Elimination of All Forms of Discrimination against Women). The PERMA contains guidelines for judges to prosecute women facing the law. Women faced by the law are defined as women in conflict with the law, there are three types of women facing the law: women as victims, women as perpetrators, and women as witnesses.

The third Chapter of the PERMA regulates the guidelines of the judges in examining cases against women facing the law. Article 4 states that in the investigation of the case, the judge takes into account gender equality and non-discrimination, by identifying the facts of the trial, such as inequality of social status between the parties, inequalities of legal protection affecting access to justice, discrimination, the psychological impact suffered by the victim, the physical and psychological incapacity of the victims, the power relationship resulting in the debilitating victim/witness and the history of the perpetrator's violence against victims and witnesses.

The judge in the trial of women faced with the law in article 5 also stipulates that in the examination of women face to the law, the judge may not show attitude or make a

statement that humiliates, blames, and/or intimidates women facing the law. To justify discrimination against women by using culture, customs, and other traditional practices, or by using expert interpretations of gender bias, questioning and/or considering the experience or background of the victim's sexuality as a basis for releasing the perpetrator or easing the punishment of perpetrators, making statements or views that contain gender stereotypes.

Article 6 of the PERMA considers gender equality and gender stereotypes in the regulations of laws and unwritten laws. To foster the values of law, local wisdom, and a sense of justice that live in societies in order to guarantee gender equality, equal protection, and non-discrimination and to consider the implementation of ratified conventions and international agreements relating to the equality of gender.

Article 7 of the PERMA states that "during the course of the trial inspection, the judge is to prevent/and/or denounce parties, legal advisers, public prosecutors and/or legal authorities who behave or make statements that humiliate, blame, intimidate and/ or use the experience or background of female sexuality facing the law".

The role of the judge in applying the PERMA Number 3, 2017 under the Supreme Court Jurisdiction

The role of law enforcement is closely related. ^[5] One of the factors that affect law enforcement is the means and facilities and cultural factors. Article 5 (1) of Law Number 48, 2009 on the Power of the Judiciary states that "judges and constitutional judges are obliged to dig, follow, and understand the values of the law and the sense of justice that lives in the Society". Thus, a judge must always follow the developments in society because the duty held in the courts must be able to give a sense of public justice. ^[6]

Legal discovery is the process of the creation of law by the subject or the inventor of law in an attempt to apply a general rule of law to his or her existence based on certain rules or methods that can be justified in legal science, such as interpretation, reasoning, exposure (construction of law) and others. These rules or methods are used so that the application of its rules to such a situation can be done accurately and relevant according to the law, so the results obtained from such a process can also be accepted and accountable in the law.

Thus, the judge must have the ability and creativity to solve and resolve matters by searching and finding the law in cases where there is no legal regulation. It makes the judges more competent to resolve the matter because not only can deliver the sound of the law but can make legal discoveries from various sources of legal discovery and can also create the law because in fact, the law exists in society. Where there is a society there must be a law, just how we dig so that the enforcement of the law can truly satisfy the sense of justice of the people. If you do the discovery of law based on the value of justice in the decision of the case and then the judgment of the judge becomes the law then will be created a law that truly corresponds to the values of justice that exist in the society.

The role of the judge against the implementation of PERMA in accordance with the principle of security before the law means that the law must be equally accessible by different people, meaning access to its law should be equal regardless of social status, race, religion, and gender, as rights in the judicial process. The PERMA is one of the steps to avoid

discrimination against women who face the law or conflict with the law.

PERMA No. 03 2017 is a product for judges to combat discrimination, especially in trial processes or trial inspections, judges have authority if there is discrimination against women in the face of the law, the judge can punish someone who is discriminating against women. The PERMA also promotes the principle of restorative justice which seeks to restore or restore the situation disrupted by the existence of violations of the law in the case of women as victims. In addition, it also gives instructions to the judge to be able to see the losses, the impact of the case, and the need for recovery that will be the consideration of the judge in his judgment.^[7]

Conclusion

There are some norms that are guidelines for judges in the trial of women who are faced with the law one of them is in the PERMA which is contained in some articles one of which is article 7, which is the essence of the judge in judging women's cases must not show or make statements that humiliate, blame and or intimidate women facing the law. The judge also during the course of the examination of trial, a judge to prevent and or persuade the parties, legal advisers, general persecutors, and or the authority of the law that degrades, inflames, intimidates, and or use the experience or background of female sexuality facing law, both as victims, perpetrators, and witnesses. Article 11 of PERMA in the case of the Supreme Court conducted a material examination relating to women facing the law, in order to take into account, the principles of human rights, the best interests, and restoration of women faced by law, ratified conventions and/or international agreements concerning gender equality, power relations as well as any gender stereotypes in the legislation and conduct a comprehensive gender analysis.

The role of the judges in the implementation of this PERMA, as set out in article 5, paragraph (1) of Law Number 48, 2009 on the Power of the Judiciary, which essentially states that judges and constitutional judges are obliged to dig, follow and understand the values of the law and the sense of justice that lives in society. The judge is one of the umbrellas for law enforcement and is one that is the Supreme Court Regulation No. 03 of 2017 on guidelines for the trial of women who face the law or conflict with the law, both as victims, perpetrators, and witnesses. The role of the judge in the trial process is set forth in Article 7 of the PERMA which essentially explains that a judge can prevent and or reprimand parties, legal advisers, public prosecutors, and legal authorities who behave or make statements that humiliate, blame, intimidate and or use the experience or background of female sexuality facing the law.

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