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## ANALYSIS OF CRIMINAL RESPONSIBILITY CRIMINAL CONDITIONERS OF RAPE TRIAL AGAINST WOMEN

*(Study of Decision Number 223 / Pid.B / 2019 /  
PN.Sdn)*

*Abstract*  
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### **Abstract**

*The results of the study were the factors causing the perpetrator to commit the criminal act of attempted rape in Decision Number: 223 / Pid.B / 2019 / PN.Sdn caused by 2 factors, namely internal factors and external factors. Internal factors such as the closeness between the perpetrator and the victim, the role of the perpetrator, and the position of the victim, while external factors include the environment or conditions in which the crime is committed, then the perpetrator's intention, low educational factors, and factors of low moral and religious knowledge, accountability of the perpetrators rape in Decision Number: 223 / Pid.B / 2019 / PN.Sdn, which states that the Defendant Musmulyanto Bin Adenan has been legally and convincingly proven guilty of committing the crime of "attempted rape" as in the First indictment of the Public Prosecutor, imposing a sentence on the Defendant Musmulyanto Therefore, Bin Adenan is imprisoned for 7 (seven) years The author's suggestion is that the judge should be more sensitive to see what facts arise during the trial, so that the facts that arise give rise to the judge's conviction that the defendant can or cannot be convicted. In addition, in making a decision, it must also be able to provide an appropriate sentence for the defendant based on aggravating or mitigating factors so as to create justice in society.*

**Keywords: Accountability; Criminal act; Attempted rape;**

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### **I. INTRODUCTION**

*The 1945 Constitution of the Republic of Indonesia affirms that the State of Indonesia is based on a rule of law (rechtstaat), not based on mere power (mechstaat). This means that the Republic of Indonesia is a democratic law state based on Pancasila and the 1945 Constitution of the Republic of Indonesia which upholds human rights and guarantees equality of every citizen before law and government. The law defines what to do and what not to do. The objective of the law is not only to convict people who have committed an illegal act, but also to prevent illegal acts that might occur.*

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*The law always seeks to guarantee and protect the rights of individuals and society and protect the interests of the State from Criminal procedural law has a purpose, namely to seek and find material truth, namely the complete truth of a criminal case by applying the provisions of criminal procedure law honestly and in a timely manner with the aim of finding out who the perpetrator can be accused of committing a violation of the law, then request examination and a decision from the court in order to determine the truth of whether the person accused is proven to have committed a criminal act or not so as to create legal justice. deviation and deni.*

*According to Barda Nawawi Arief, law enforcement is an activity to harmonize the relationship of values that are defined in solid and embodied values and attitudes as a series of elaboration of the final stage of values to create, maintain and maintain a peaceful social life which is a preventive measure ) and acts of eradication (repressive). (Barda Nawawi Arief, 2008: 13)*

*Furthermore, regarding the meaning of law enforcement. In a broad sense, it includes activities to implement and apply law and take legal actions against any violations or violations of the law committed by legal subjects, either through judicial proceedings or through arbitration processes and other dispute resolution mechanisms (alternative disputes or conflicts resolution).*

*In a narrow sense, law enforcement involves taking action against any violations or deviations from statutory regulations, especially in a narrower way through the criminal justice process involving the roles of the police, prosecutors, advocates and judicial bodies (Barda Nawawi Arief, 2008 : 22)*

*One form of crime that is very detrimental and unsettling to society is the crime of rape. Rape is one of the many violations of human rights that often occur, so there is no reason to justify it, both from an ethical and religious perspective. The crime of rape is an act that is condemned by every civilized society. Only people who are immoral and have morals are still tolerant of the act of rape. Therefore, it is not surprising that the rapist is likened to an animal.*

*Crime is increasingly developing in its form not only relating to crimes of life or related to property, but also other crimes including the emergence of crimes related to decency, namely crimes in the form of sexual crimes which not only affect women. Sexual violence itself is a sexual contact in the form of sexual coercion and coercion which one party does not want. (Ismantoro Dwi Yuwanno. 2015:1)*

*Of the various crimes that have disturbed society and are contrary to the law, one of them is the crime of rape. Rape or sexual crimes are generally experienced by women, especially children or young people (adolescents). This incident occurs in society regardless of the social stratification of the perpetrator or victim. These crimes can arise due to the influence of the environment or psychological background that affects the behavior of the perpetrator in the past or because of spontaneous psychological shocks due to sexual stimulation.*

*A crime of decency is an act that violates ethics and morals so that it is not justified according to statutory regulations. Criminal provisions for criminal acts of decency are regulated in Chapter XIV in Book II of the Criminal Code (hereinafter referred to as KUHP), namely Articles 281 to Article 303. If seen from the provisions of the article, there are words that have different meanings, namely the meaning of intercourse, sexual immorality, and rape. One of*

*the criminal acts of decency includes the crime of rape and sexual immorality. The criminal act of rape (sexual violence) when assessed based on a criminological perspective refers to motives and behavior, where it has the motive of satisfying sexual desire.*

## **2. METODE**

*The problems contained in this thesis journal research are that the researcher takes two approaches, namely through a normative juridical approach and an empirical approach in order to obtain a correct and objective research result as follows.*

### *a. Normative Juridical Approach*

*The normative juridical approach is an approach by examining the methods, norms, rules, which are related to the problem to be studied. This approach is intended to collect various kinds of laws and regulations, theories and literatures that are closely related to the problem to be studied, namely the criminal act of attempted rape against women.*

### *b. Empirical Approach*

*The empirical approach is carried out by researching and collecting primary data obtained directly through research on the object of research by means of observation and interviews with sources related to the issues discussed regarding the criminal act of attempted rape against women.*

## **3. DISCUSSION**

### **A. Factors Causing the Perpetrator to Commit the Crime of Attempted Rape Against Women (Decision Study Number 223 / Pid.B / 2019 / PN.Sdn)**

*Advances in science and technology, development of population and community structure as well as changes in social and cultural values also influence and have a separate impact on the motives, characteristics, forms, frequency, intensity, and modus operandi of violent crimes. Many factors directly or indirectly contribute to their own color and impact on the emergence of violent crime. The crime of rape cannot be viewed as a crime that only becomes a private matter (individual victims), but must be made a public problem because this crime is clearly a form of immoral and heinous behavior which in addition to violating Human Rights, also causes physical suffering, social, and psychological for women. Rape and its handling have been an indication and evidence of the weak protection (protection) of human rights, especially women from acts of sexual violence which are classified as the heaviest violence.*

*According to Ipda Hendra Saputra as an investigator at the East Lampung Police, sexual violence (rape) is an act that can be categorized as sexual relations and behavior that is not fair, causing serious losses and consequences for the victims.*

*Sexual violence (rape) has a permanent and long-term physical and psychological impact. The crime of sexual violence (rape) which does not subside by the times, advances in technology, and advances in the human mindset, is one of the crimes that is very disturbing to society amidst its development - these developments.*

*Suwardi as the Prosecutor at the East Lampung District Attorney said that there are two sources of causes for criminal acts, namely the first source is internal factors such as mental*

*illness, emotional power, mental low, anomy, age, sex, individual position in society, individual education, entertainment problems. individual. While the second factor is external factors, which originate from outside the individual, such as economic factors, religion, literature and films.*

*Indra Joseph Marpaung as a Judge at the Sukadana District Court stated that the factors causing a person to commit a criminal act can be divided into several factors including:*

- a. Individual (anthropological) which includes: age, sex or gender, civil status, profession or occupation, place of residence/ domicile, social level, education, organic and psychological constitution.*
- b. Physical (natural, natural): race, ethnicity, climate, fertility, earth disproportion, natural conditions at night and during the day, seasons, meteoric or space conditions, humidity and temperature.*
- c. Social: among others: population density, community composition, customs, religion, government order.*
- d. Economic and industrial conditions, education, social security, legislative and legal institutions, and others.*

*Then according to Indra Joseph Marpaung that a person who commits a crime is not only based on the intention of the perpetrator himself but is based on other factors such as the opportunity factor, in a criminal act in this case the opportunity factor itself is very dominant because without the opportunity all the criminal acts are not will occur.*

*According to Ipda Hendra Sputra as an investigator at the East Lampung Police, rape is a violent crime related to decency. Various kinds of factors cause the occurrence of the crime, one of which is supported by the circumstances of the environment and the position of the victim, which can trigger the perpetrator's intention to commit the sexual crime (rape). It is not uncommon for these crimes to be influenced by factors that exploit the relationship between the perpetrator and the victim, such as blood relations, relatives, relatives, and others. So that it is easier for the perpetrator to commit the rape because he knows more about the victim.*

*Based on the description of the above discussion, it can be analyzed that according to JE Sahetapy, the cause / driving factor for crime is the sobural approach, namely the acronym of social values, cultural aspects, and structural factors which are the elements present in every society. Cultural aspects and structural factors are two elements that influence each other in society. Then according to Momon Karta Saputra the factors that cause a person to commit a crime, namely internal factors including the special nature of the individual, such as: mental illness, emotional power, low mental and anomic and general characteristics of the individual, such as: age, gender, position in society , education and entertainment. Then external factors include economic, environmental, religious and family factors.*

*In connection with this theory, it can be analyzed that the factors causing the perpetrator to commit the criminal act of attempted rape in Decision Number: 223 / Pid.B / 2019 / PN.Sdn are caused by 2 factors, namely internal factors and external factors. Internal factors such as the closeness between the perpetrator and the victim, the role of the perpetrator, and the position of the victim, while external factors include the environment or conditions in which the crime is committed, then the perpetrator's intention, low education factor, and low moral and religious knowledge.*

## **B. Criminal Liability Against Perpetrators Who Commit the Crime of Attempted Rape Against Women (Study of Decision Number 223 / Pid.B / 2019 / PN.Sdn)**

*Criminal law is a rule that contains crimes imposed on a person proven to have committed a criminal act. In order to be convicted of a person, what is seen is that the person has committed an act against the law, that person has been proven guilty, and can account for his actions. In criminal law being able to be held accountable for his actions is known as criminal liability.*

*According to Indra Joseph Marpaung as a Judge at the Sukadana District Court, said that criminal sanctions are the imposition of a sentence given to someone who is found guilty of committing a criminal act. These types of crimes vary widely, such as death penalty, life imprisonment, imprisonment, imprisonment and fines which are the principal crimes, and deprivation of certain rights, confiscation of certain items, and announcement of a judge's verdict which is additional penalties. The purpose of criminal sanctions is to maintain public order, and has the combined purpose of frightening, correcting and for certain crimes to destroy.*

*Suardi as the Prosecutor at the East Lampung District Attorney said that for the existence of criminal responsibility it must be clear first who can be accounted for. This means that it must be considered beforehand who is declared as the maker of a crime. The question is whether accountability is requested or not, the most important thing is in the policy of the parties concerned to decide whether or not they feel necessary according to that accountability. Application of criminal law or a criminal law relating to the time and place the act was committed. As well as the validity of criminal law according to time regarding the application of criminal law from other aspects. In the event that a person commits a criminal act (feit) while the act has not been regulated or the provisions concerned have not been applied, then that matter cannot be prosecuted and absolutely cannot be convicted. Furthermore, Indra Joseph Marpaung as Judge at the Sukadana District Court said that criminal responsibility is the ability of a legal subject that has caused a criminal event and is punishable by punishment. Regarding the criminal act of rape in the Criminal Code is regulated in Article 285 "Whoever by force or threat of violence forces a woman to have intercourse with him outside of marriage, is threatened for committing rape with a maximum imprisonment of twelve years". Rape in question is rape for sexual intercourse. Conducted with violence or threats of violence, and outside of marital relations, which means that there is violence or threats of violence received by the victim from the perpetrator who is not her husband to have sexual relations or have intercourse.*

*In the provisions of Article 285 of the Criminal Code which juridically regulate the crime of rape, there are elements that must be fulfilled, one of which is violence. The existence of this element of violence is an element that distinguishes rape from other decency crimes regulated in the Criminal Code. In contrast to the juridical perspective, from a criminological perspective that is used as the benchmark is consent is not violence which is the main thing. This element of agreement determines and qualifies an act as rape.*

*According to Ipda Hendra Saputra, S.H. as the investigator at the East Lampung Police that there are conditions for an attempted criminal act which can be called an attempt to commit the crime of rape are:*

- 1. There is an intention to commit the criminal act of rape;*

2. *The intention to commit the criminal act of rape must have been realized by commencing the execution;*
3. *The implementation of committing the criminal act of rape, which had already been initiated, was not completed, because it was obstructed by reasons that later arose, not in the will or will of the perpetrator himself.*

*Furthermore, Indra Joseph Marpaung as the Judge at the Sukadana District Court said that in deciding case Number 223 / Pid.B / 2019 / PN.Sdn it was carried out by considering all aspects revealed in front of the trial including testimonies of witnesses, expert statements, letters, instructions and statements. the defendant and assessed the elements contained in Article 285 of the Criminal Code in conjunction with Article 53 of the Criminal Code The considerations are as follows:*

*1. Elements of Whom;*

*Considering, that what is meant by "Whoever" refers to the perpetrator of a criminal act who has violated laws or legal regulations in force in society, namely legal subjects who have rights and obligations and can be accountable for their actions, in this case the legal subject can be in the form of an individual or a legal entity, a perpetrator of an event or a criminal act who commits a criminal act as charged by the public prosecutor in the case being tried whose identity is as in the indictment of the public prosecutor, the perpetrator does not need certain criteria, anyone can do it; Considering, whereas the Public Prosecutor has presented the Defendant Musmulyanto Bin Adenan who has an identity that matches the indictment of the Public Prosecutor;*

*Considering, whereas based on the testimony of the Witnesses and the testimony of the Defendant at trial it is proven that the identity of the Defendant is not denied to be true, so there is no error in persona that the Defendant is a suspect in the investigation who is suspected of having committed a criminal act which is the basis for the indictment of the Public Prosecutor;*

*Considering, therefore, that the Panel of Judges is of the opinion that the Defendant is the person who is referred to as "Whoever" in Article 285 of the Criminal Code Jo. Article 53 of the Criminal Code is that the criminal acts against him will be considered in proving the following elements; Considering, whereas based on the facts revealed above, the Panel of Judges is of the opinion that the "Whom" Element has been fulfilled;*

*2. Elements of attempted violence or threats of violence to force a woman to have intercourse with him outside of marriage; Considering, that if the formulation of Article 53 Paragraph (1) of the Criminal Code is observed carefully, in order to be categorized that the Defendant has attempted a criminal act, it must meet the conditions, namely an intention; there is a start of implementation; the act is not completed, not solely because of his own will; Considering, whereas based on the evidence and evidence, the legal facts were obtained that Witness Welang knew the Defendant because Witness Welang often saw the Defendant because the Defendant was a crew member of the Haji Pangek ship; Considering, that on Friday 31 May 2019 at around 19.00 WIB at the irrigation embankment of Dusun IV Margasari Village, Labuhan Maringgai District, East Lampung Regency, the Defendant had inserted the Defendant's finger into Witness Welang's genitals;*

*Considering, whereas the incident started on Friday, 31 May 2019, at that time the Defendant saw Witness Welang sitting on the base, then Witness Welang was about to borrow the Defendant's cellphone. Because the Defendant's cellphone ran out of battery, the Defendant*

went to the next stall to charge the Defendant's cellphone. Then Witness Welang returned to his house but not long afterwards Witness Welang came out and chatted with the Defendant at the Defendant's stall; Considering, whereas the Defendant later seduced Witness Welang by means of the Defendant offering a sum of money to Witness Welang for having sex like husband and wife with the Defendant. Then the Defendant went to borrow a Honda motorbike. After the Defendant received a motorcycle loan, the Defendant returned to the Defendant's stall to meet Witness Welang. After arriving on the ground, the Defendant then grabbed Witness Welang's hand so that Witness Welang could get on a motorcycle, after Witness Welang got on a motorcycle.

Considering, that after the Defendant kissed Witness Welang's genitals, the Defendant then inserted the Defendant's middle finger into Witness Welang's genitals repeatedly, after which the Defendant peed while taking off the clothes the Defendant was wearing until it was completely naked. Then the Defendant ordered Witness Welang to hold and suck the Defendant's genitals but Witness Welang did not want to, after that the Defendant took the Defendant's trousers which the Defendant would use to cover Witness Welang's head, but when the Defendant took the pants, suddenly the Defendant's cellphone sounded and when the Defendant received a call. Witness Welang slowly ran away. not far when Witness Welang ran away, Witness Welang fell into a siring which resulted in Witness Welang being soaked, Witness Welang's feet and hands were injured, but Witness Welang continued to run towards the residents' houses and banged on the residents' doors until finally Witness Welang was helped by the residents and Witness Welang was escorted return

Considering, that Witness Welang has been examined by a doctor and based on the results of *Visum Et Repertum* Number 29/554/ 200-01 / RSUD / VI / 2019 dated 12 June 2019 which was made and signed by dr. Nengah, a doctor at the Sukadana Regional General Hospital of the East Lampung Regency Government, who conducted an examination of Welang Binti Darwis with the results of the examination: there was a blister on the right hand on the palm measuring 1X1 cm on the left leg measuring 5 X 0.5 cm, distance to the knee 8 cm , there is a reddish bruise on the left thigh measuring 5 X 5 cm with a distance of 10 cm of keanus, there is a torn genital wound at 6 and 9 o'clock. Conclusion: there is a tear in the hymen / hymen due to blunt force trauma

Considering, that because of all the elements of Article 285 of the Criminal Code Jo. Article 53 of the Criminal Code has been fulfilled, so the Defendant must be legally and convincingly proven to have committed the crime of "attempted rape" as indicted in the First indictment of the Public Prosecutor; Considering, that in order to impose a sentence against the Defendant, it is necessary to first consider the conditions that are burdensome and which make it easier for the Defendant.

The situation was burdensome: The defendant's actions disturbed the public; The defendant did not set a good example for an older person who should have become a protector and protector; The Defendant's actions had damaged Witness Welang's dignity and honor; The Defendant's actions had made Witness Welang's future bleak; The Defendant's actions had ruined Witness Welang's family hopes; The trauma and bad influence experienced by Witness Welang can affect the soul of Witness Welang; The defendant committed the act to a person who had special needs; Mitigating circumstances: The defendant admitted his wrongdoing and promised not to repeat it again; The defendant had never been convicted;

#### 4.CLOSING

*Based on the results of discussion and research on the problem, it can be concluded as follows:*

- A. *The factors that caused the perpetrator to commit the criminal act of attempted rape in Decision Number: 223 / Pid.B / 2019 / PN.Sdn were caused by 2 factors, namely internal factors and external factors. Internal factors such as the closeness between the perpetrator and the victim, the role of the perpetrator, and the position of the victim, while external factors include the environment or conditions in which the crime is committed, then the perpetrator's intention, low education factor, and low moral and religious knowledge.*
- B. *The accountability of the perpetrator of attempted rape in Decision Number: 223 / Pid.B / 2019 / PN.Sdn, namely stating that the aforementioned Defendant Musmulyanto Bin Adenan was legally and convincingly proven guilty of committing the crime of "attempted rape" as in the Prosecutor's First indictment. General, sentenced the Defendant Musmulyanto Bin Adenan to a sentence of 7 (seven) years imprisonment; stipulates that the entire period of arrest and detention the Defendant has served is deducted from the sentence imposed, the Defendant must pay a case fee of Rp. 2,000.00 (two thousand rupiah); In deciding the case Number 223 / Pid.B / 2019 / PN.Sdn, the judge carried out by considering all aspects revealed before the trial including testimony from witnesses, expert statements, letters, points and statements of the defendants and assessing the elements contained in the article. 285 KUHP in conjunction with Article 53 KUHP. Suggestion*

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