

## Perkosaan sebagai pelanggaran hak asasi manusia: kajian filosofis metodologi pembuktian hukum

Agus Purwadianto, author

Deskripsi Lengkap: <https://lib.ui.ac.id/detail?id=83099&lokasi=lokal>

---

### Abstrak

Perkosaan memang belum akan segera lenyap dari muka bumi karena walaupun secara moral telah dikecam segenap manusia, namun sistem kemasyarakatan dan hukum "tanpa sadar" masih mempertahankannya. Hampir semua definisi hukum mengakui hubungan dyadic timpang yang menempatkan perempuan sebagai korban dan laki-laki sebagai pemerkosanya. Dalam perkosaan terdapat trias yakni penderitaan korban, kebrutalan pemerkosa dan ketidakadilan gender. Trias perkosaan berpengaruh dalam pembuktian mediko-legal saat ini, sehingga adalah utopis diperoleh bukti utama-ideal bila terjadi korban tidak diperiksa secara forensik klinik atau ada keterlambatan lebih dari 3 hari pasca-perkosaan, sehingga yang muncul hanya bukti medik & biomedik berkategori lebih rendah atau tidak ada sama sekali yang kurang atau tidak meyakinkan hakim.

Perkosaan berdasarkan kajian teori epistemologis HAM Alan Gewirth dan analisis kritis James W. Nickel merupakan pelanggaran inti dasar sekaligus keseluruhan dari trias hak-hak asasi perempuan (HAP) masing-masing hak atas persamaan (HAP-1), hak atas otonomi (HAP-2) dan hak integritas pribadi (HAP-3); juga trias hak reproduksi perempuan (HRP) masing-masing hak atas perencanaan dan informasi keluarga (HRP-1), hak atas pelayanan prima kesehatan reproduksi & seksual (HRP-2) dan hak atas nirdiskriminasi reproduksi (HRP-3) yang kesemuanya merupakan bagian tak terpisahkan dari trias hak asasi manusia (HAM) John Locke yang relevan yakni hak atas kehidupan (HAM-1), hak atas kebenaran (HAM-2) dan hak atas kepemilikan pribadi (HAM-3).

Feminisme dengan aliran teorinya seperti liberal, radikal, marxis, sosialis, eksistensial, psikoanalisis, postmodernmultikultural dan ekofeminis secara aporiatif berguna dalam membantu merefleksikan trias perkosaan, khususnya perempuan-terperkosa yang terpasung atau terdominasi oleh sistem patriarki yang menyebabkan kekerasan gender. Melalui etika feminis (etika kasih, etika kepedulian) dan trias metodologi hukum feminis dilakukan dekonstruksi landasan filosofis metodologi pembuktian mediko-legal perkosaan saat ini yang senantiasa menyebabkan ketidakadilan bagi korban-terperkosa. Perempuan korban menurut Rawls merupakan pihak yang paling kurang diuntungkan yang berhak mendapat perbedaan perlakuan hukum.

Dongkrakan reflektif guna mencapai kebenaran epistemologis multimetodologi pembuktian mediko-legal perkosaan memunculkan trio pihak yang terlibat : (1) Visum et Repertum VeR "klasik" saat ini (yang dibuat oleh dokter bidang forensik klinik di "lingkaran luar" korban, seperti dokter spesialis kebidanan & kandungan dan dokter terlatih lainnya dengan menggunakan metode manusia biomedik yang positivistik-reduksionistik-mekanistik yang identik dengan ketubuhan anatomis korban; (2) VeR Holistik oleh dokter di "lingkaran luar" plus karena disertai psikiater/psikolog di "lingkaran dalam" korban menggunakan model

manusia infomedik yang holistik-sibernetik identik dengan tubuh semi-diskursif korban sebagaimana Protokol Jakarta dalam menguak kasus perkosaan massal Mei 1998 lalu dan (3) VeR Eksistensialistik yang menggunakan metode fenomenologi-eksistensial yang menampilkan kesaksian korban sebagai subyek-eksis diikuti dengan hermeneutika oleh pelbagai ahli "lingkaran dalam" korban, termasuk dokter/psikiater atau relawan-ahli pendamping terhadap tubuh diskursif korban. Gabungan ketiga VeR di atas membentuk VeR Komprehensif yang disusun bersama oleh semua komponen "lingkaran luar & dalam" dalam rangka mencapai keadilan berperspektif korban dengan memakai intersubektivitas dialogisemansipatorik antar ahli melalui etika diskursus komunikasional Habermas. Dengan VeR Komprehensif diharapkan hakim berkeyakinan pasti secara lebih teguh bahwa pemerkosa terbukti bersalah melakukan perkosaan dan karenanya dijatuhi sanksi setimpal.

<hr>

Rape, a crime of sexual assault, is still actual It happens daily, in spite of the fact that it is a strongly disapproved, even condemned and morally unacceptable, act. Although rape survivors and victims include men and children, most of the existing rape laws are not accordingly designed; they are fabricated by and in use in patriarchal society, that prejudicially approaches rape cases with the idea that men were the only possible perpetrators and only women could legally be the victims.

Gendered social injustice (the third of rape "triad") plays a significant role in collecting and documenting medico-legal evidences, next to the victims suffering (the first triad) and the perpetrator 's brutality (the second triad). International studies shows that only a small percentage of rape victims/survivors did go to the police to report the sexual assault, or sought medical care for their physical injuries. And only a very small percentage of these women underwent clinical forensic examination. When they did, it is almost always days later, while the ultimate ideal main-medical/biomedical evidences taken later than 3 (three) days after the assault took place is not valid as scientific proof in court.

Rape, according to human rights epistemology of Alan Gewirth and critical analysis of James W. Nickel theory, violate the total as well as the central-core of the triad of women's rights e.g. the right of equality (1s) , autonomy (2nd) , and personal integrity right (3rd) also the triad of women's reproductive rights e.g. the freedom to plan the number, spacing and timing of their children and to have the information and means to do so (1'd), right to attain the highest standard of sexual and reproductive health (2"d) and reproductive free discrimination, coercion and violence (3rd) as an indivisible and in separable part of human rights, especially from John Locke 's category e.g. the right to life (1S), to freedom (2nd) and personal property right (3rd)

Each theory of feminism, e.g. liberal, radical, Marxist, socialist, existentialist, psychoanalyst, postmodern/multicultural and ecofeminist has an important role supporting the reflection toward the rape triad, that oppressed, subordinated and alienated the rape-victim with gender-based violence. Feminism based on women 's perspective of feminist ethics (caring ethics, ethics of love) and feminist legal method, as the deconstruction method of the patriarchy, will strengthen the fundamental principles of new methodology more justly toward the rape-victims. Raped-women, as said by Rawls, were the least advantage parties, that morally have the right to treat differently to emancipate them.

There are three parties improving the philosophical grounds of multi-methodology on medico-legal evidences which should be enacted as a way to reach the epistemological truth of rape: (1) the "Classical"/existing Visum et repertum (medical expertise) based on positivistic-reductionistic-mechanistic approach of a biomedical as well as her given/anatomical body model made by clinical forensic specialist (e.g. obstetric gynecologist or well-trained general practitioner) as an "outer circle" of the victim, (2) the "Holistic" expertise based on cybernetic approach of an info medical as well as her "semi-discursive" body model made both by clinical forensic specialist ("outer circle") and psychiatrist or psychologist ("inner circle" of the victim), and (3) the "Existentialistic" expertise made by the rape-victim's testimony based on the existential phenomenological method as well as the hermeneutical of the victim's discursive body. The "Comprehensive" expertise, a combination of three expertise mentioned above through the Habermas' communicational discourse ethics, will give the court the epistemological truth of rape. It will lead to the judges' certainties to punish the perpetrator in a real just sanction.