



# Implementation of Criminal Penalties Against Perpetrators of Sexual Violence

Viola Gemmy Gemaya <sup>\*1</sup> Henry Aspan <sup>\*2</sup> T. Riza Zarzani <sup>\*3</sup>

<sup>123</sup> Universitas Pembangunan Panca Budi

E-mail: [haloviooo@gmail.com](mailto:haloviooo@gmail.com) [henryaspan@dosen.pancabudi.ac.id](mailto:henryaspan@dosen.pancabudi.ac.id)  
[trizazarzani@dosen.pancabudi.ac.id](mailto:trizazarzani@dosen.pancabudi.ac.id)

Article Info	Abstract
<b>Article History</b> Received: 2025-08-25 Revised: 2025-08-29 Published: 2025-09-05  <b>Keywords:</b> <i>Legal Consequences, Sexual Violence, Criminal Implementation.</i>	The purpose of this paper is to determine how criminal penalties are applied to perpetrators of sexual violence and the main obstacles in implementing criminal penalties against perpetrators of sexual violence in the current legal system. The data collection technique used in this study is document study or library research, and the data analysis used in this study is qualitative analysis. Currently, there is a law regulating the Crime of Sexual Violence, namely Law Number 12 of 2022. The presence of this law is a hope for the community to reduce the growth of sexual violence cases that occur in Indonesia. Obstacles experienced include protracted legal processes (undue delay), evidence, the absence of articles regulating specific sexual crimes, intimidation from perpetrators, and lack of support from the victim's immediate environment.

## I. INTRODUCTION

Sexual violence is a persistent issue that haunts Indonesian society. Despite significant progress in legal and policy developments, crimes involving harassment, exploitation, and sexual crimes have never truly disappeared from social life. Sexual violence can affect anyone, regardless of gender, age, or social status. The public often views sexual violence as solely female, when in reality, men can also be victims. Similarly, both men and women can be involved in sexual crimes. Even more worrying is that perpetrators often come from those closest to the victim, such as family, relatives, or even those who should be trusted to provide protection. This phenomenon demonstrates the fragility of society's social fabric in the face of the threat of sexual violence.

From a criminal law perspective, acts related to violence or sexual harassment are classified as crimes against morality. Any act involving sexual coercion, harassment, or indecent acts is prohibited because it violates values of decency, legal norms, and human rights. Victims of these crimes not only experience physical suffering but also emotional wounds that damage their self-esteem and human dignity. According to Waluyo (2004), criminal law serves as an instrument to address criminal acts that disrupt social order, including acts that attack individual honor and morality. Thus, sexual

violence is positioned not only as a moral violation, but as a serious violation against humanity that requires criminal sanctions.

Sexual violence can occur in various settings, both private and public. Many cases occur in secluded, unsupervised spaces, but it is also common in schools, offices, or other public places that allow for uncontrolled interaction. Even more worrying, sexual violence often occurs within the family environment. In such cases, the perpetrator typically has an emotional closeness to the victim, placing the victim in a difficult position and experiencing double pressure. Many perpetrators knowingly commit immoral acts but still believe their actions are not wrong. The perpetrators' motives also vary, ranging from fantasy and fetishes to power struggles. Finkelhor and Browne (in Tower, 2002) emphasize that many cases of sexual violence stem from unequal power relations, where the perpetrator feels they have control over the victim's body.

In Indonesia, sexual violence, particularly involving female victims, is seen as a serious threat to national development. Sexual violence has far-reaching impacts: it reduces victims' self-confidence, hinders participation in social activities, and disrupts their physical and mental health. Furthermore, victims also experience economic, political, and cultural limitations due to prolonged trauma. According to Bagong (2010),

victims of sexual violence generally experience profound psychological distress, requiring a long time to recover. Thus, sexual violence is not merely an individual crime, but a social problem that impacts the quality of life of the community.

One of the obstacles faced in enforcing the law against sexual violence is the limited existing regulations. The Criminal Code (KUHP) does not explicitly recognize the term "sexual harassment" but only refers to it as "indecent acts." Articles 289 to 296 of the KUHP contain provisions regarding indecent acts. However, this formulation is often deemed inadequate because it fails to encompass the complex forms of sexual violence that occur in society. According to Zaidan (2015), this regulatory weakness results in many victims not receiving maximum protection. This situation has led to the birth of various other laws, such as the Child Protection Law (Law No. 35 of 2014), the Law on the Elimination of Domestic Violence (Law No. 23 of 2004), and the Pornography Law (Law No. 44 of 2008). While all of these regulations do regulate some forms of sexual violence, they are still partial and scattered across various legal instruments.

The enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence marks a significant milestone in the history of legal protection in Indonesia. This law was greeted with optimism, as it was seen as capable of closing legal loopholes that had previously hindered victims' access to justice. According to Eddyono (2017), this law resulted from a long struggle by civil society groups, particularly women's organizations, who had long urged comprehensive regulation of sexual violence within a single legal instrument. With this regulation, it was hoped that victims would receive better protection, the legal process would be more effective, and justice could be achieved. However, despite the existence of a relatively strong legal framework, the issue of sexual violence remains a significant challenge, as it involves social and cultural aspects, as well as the courage of law enforcement officers in enforcing the law.

On the other hand, obstacles in applying criminal penalties to perpetrators of sexual violence also arise from technical and structural aspects. The legal process often drags on, a situation known in legal terms as undue delay. This situation not only adds to the suffering of victims but also opens up opportunities for perpetrators to escape prosecution. Furthermore, proving cases of sexual violence often faces

difficulties due to limited physical evidence, a lack of witnesses, or even because victims are reluctant to speak out due to shame and fear. According to Hitipeuw (2015), many cases ultimately do not reach court due to evidentiary challenges. Other equally important factors include intimidation by perpetrators against victims and their families, as well as minimal support from the victim's community. This situation demonstrates that the application of criminal penalties is not only a matter of legal text, but also a matter of courage, sensitivity, and the commitment of various parties to provide protection.

Based on this description, two fundamental questions emerge that form the basis of the research problem. First, how is criminal punishment applied to perpetrators of sexual violence in the Indonesian legal system? Second, what obstacles are faced in the process of implementing these punishments? These two problem formulations emphasize that the problem of sexual violence cannot be understood from just one perspective but must be analyzed comprehensively, including regulations, judicial practices, and social support. According to Prasetyo (2010), criminal law should not only emphasize sanctions but also pay attention to victim protection and the preventive function of law.

In line with this, this research employs a literature study approach with qualitative methods. This means that the data used are sourced from documents, books, journals, and laws and regulations, then analyzed in depth. According to Sudarto (1990), normative legal research aims to obtain a comprehensive picture of the state of applicable regulations and how their application relates to legal theory. Using a descriptive approach, this type of research not only describes existing regulations but also seeks to assess the extent to which these regulations are able to address real-world problems in society.

The ongoing occurrence of sexual violence highlights the significant gap between the rule of law and social reality. While the law clearly outlines what is prohibited, society and law enforcement should work together to ensure protection for victims. However, practice in the field demonstrates that law enforcement is often hampered by structural, cultural, and psychological factors. Many law enforcement officials still view sexual violence as a mere moral issue, rather than a serious crime that violates human rights. This paradigm often results in

officers' actions that are detrimental to victims, such as blaming them, doubting their testimony, or even encouraging them to reconcile with their perpetrators. According to Amalia (2019), this mindset perpetuates the cycle of violence and reinforces a culture of impunity for perpetrators.

Cultural aspects are indeed one of the biggest obstacles. In societies still steeped in patriarchal values, victims of sexual violence are often viewed as disgraced, not as those who deserve protection. As a result, many victims choose to remain silent rather than report their cases. Hitipeuw (2015) states that shame and fear of social stigma discourage victims from pursuing legal action. The phenomenon of victim blaming remains very strong, so victims' courage to seek justice often fails. This situation clearly demonstrates that criminal law enforcement must be accompanied by a shift in societal perspectives. Without cultural change, even good laws will not function optimally.

In addition to cultural barriers, weak victim protection exacerbates the situation. Victims often lack adequate psychological and legal support. In cases of sexual violence, victims' needs extend beyond punishment for the perpetrator, to recovery of their psychological and physical well-being. Irfan (2011) emphasized that victim protection is at the heart of the modern criminal justice system. Without recovery, victims will continue to bear the burden of trauma even after their cases have been adjudicated. Therefore, the existence of victim support institutions needs to be strengthened, both in terms of regulations and resources.

Another obstacle is overlapping legal regulations. Before the enactment of the Sexual Violence Crimes Law, various cases of sexual violence were regulated by numerous different laws. This made it difficult for law enforcement officials to determine the appropriate legal instrument to use. Cases often stalled at an early stage simply because officers were confused about which article to use. With the enactment of Law No. 12 of 2022, it is hoped that this confusion can be resolved by more clearly defining all forms of sexual violence. However, as emphasized by Bari (2023), the effectiveness of the law depends not only on the text but also on consistent implementation by law enforcement officials.

Given these various obstacles, it is clear that the application of criminal penalties to perpetrators of sexual violence is not a simple matter. The research questions raised in this study, namely how criminal penalties are

implemented and the obstacles encountered, cannot be answered solely by examining the text of the law. The answer must involve a multidimensional analysis encompassing legal, social, psychological, and cultural aspects. Therefore, this research seeks to provide a more comprehensive understanding of the problem of sexual violence in Indonesia. As Lamintang (1984) argued, criminal law must be viewed as a means to protect the legal interests of society. This protection will fail if the application of criminal penalties is ineffective or even increases the suffering of victims.

From this description, it is clear that the biggest challenge is not simply formulating new laws, but rather ensuring that existing laws are truly enforced. Awareness among law enforcement officials, public support, and the courage of victims to speak out are just as important as the rule of law itself. Without synergy between these three, justice for victims of sexual violence will remain an elusive dream. Therefore, this study emphasizes the importance of improving criminal enforcement by strengthening coordination between authorities, expanding victim protection, and eliminating the stigma that continues to silence victims' voices.

## **II. RESEARCH METHODS**

This study employed a library research method with a qualitative approach. All data analyzed were sourced from secondary legal materials, such as laws and regulations, court decisions, legal textbooks, and relevant scientific journals. This approach was chosen because it aligns with the nature of normative legal research, which examines written norms and legal doctrines to gain a deeper understanding of the problem. The analysis was conducted descriptively, describing the state of criminal law regarding sexual violence while explaining the obstacles that arise in its implementation. According to Sudarto (1990), normative legal research emphasizes secondary data analysis by linking legal texts with theory, while Lamintang (1984) emphasized the importance of descriptive research to demonstrate how theory works in practice.

In addition to legal documents, this study also considers academic literature and previous research findings, such as Muladi

and Barda Nawawi (1984) on the function of criminal law, Prasetyo (2010) on the concept of modern criminal law, and Zaidan (2015) on the urgency of legal reform. Findings from empirical research, such as Amalia (2019) discussing the impact of sexual violence on children and Bari (2023) on the application of criminal sanctions, also enrich the analysis. Using this method, the study not only describes applicable regulations but also assesses their effectiveness in protecting victims, as suggested by Eddyono (2017) that normative research should be oriented towards victims' rights.

### **III. RESULTS AND DISCUSSION**

#### **A. Overview of Sexual Violence**

Sexual violence is a complex social and legal phenomenon, encompassing not only physical acts of forced sexual intercourse but also other forms such as verbal harassment, sexually suggestive comments, and threats that lead to attacks on a person's body and dignity. This phenomenon has long been a concern internationally and nationally, as its impact extends beyond the individual victim to social life, culture, and even national development. In a general context, violence is understood as the use of physical force or power, whether through threats or actual actions, directed at an individual or group, resulting in suffering, trauma, psychological harm, or even loss of life. Thus, sexual violence can be viewed as a subset of violence in general, but with specific characteristics because it concerns the victim's sexuality, body, and identity.

According to the World Health Organization (WHO), sexual violence includes any act related to sexual activity or attempted sexual activity, comments or touching that attacks a person's sexuality, carried out by force, regardless of the relationship between the victim and the perpetrator (WHO, 2002). This definition emphasizes that sexual violence is not limited to rape or physical penetration, but also includes a variety of other behaviors that can disrupt and injure human dignity. This WHO definition is important because it places sexual violence within the framework of public health and human rights, rather than simply a moral or private issue. In many cases in Indonesia, sexual violence is often viewed as a domestic issue or a family shame, so

victims are often encouraged to remain silent to protect their good name. The WHO perspective shows that this view is wrong, because sexual violence is a serious problem that must be addressed collectively by the state and society.

In line with this, regulations in Indonesia have begun to accommodate a more detailed definition of sexual violence. One example is Article 1, number 1 of the Minister of Education, Culture, Research, and Technology Regulation Number 30 of 2021, which states that sexual violence is any act that includes insults, harassment, degrading dignity, or attacks on a person's body or reproductive organs that occurs due to unequal power relations. This regulation emphasizes that unequal power relations are one of the roots of sexual violence. In other words, sexual violence does not occur solely due to sexual urges or biological factors, but is closely related to social structures that place one party more dominant than another. In patriarchal societies, for example, male dominance often makes women vulnerable to becoming victims of sexual violence, both in private and public spaces. This concept of power relations provides a new understanding that efforts to prevent sexual violence cannot simply emphasize individual morality but must also address unequal social structures.

Forced sexual intercourse, without consent, is clearly a form of violence that causes profound harm to the victim. Physically, victims can suffer injuries, reproductive health problems, and even unwanted pregnancies. Psychologically, the impact is far more serious, resulting in long-lasting trauma. This situation illustrates that physical strength is often a determining factor in sexual violence. Men, who are generally biologically stronger, often use this advantage to coerce women into unequal relationships. However, it is important to note that victims of sexual violence are not always women; in certain situations, men can also be victims. Essentially, anyone can be a victim if they are in a weak position in power relations.

The impact of sexual violence has been extensively studied, both by international institutions and local researchers. Most victims experience psychological disorders, including post-traumatic stress disorder (PTSD). This disorder is characterized by intense fear, excessive anxiety, difficulty sleeping, and emotional rigidity following a traumatic event. Beitchman and colleagues (in Tower, 2002) found that victims of sexual violence typically require a long time, often between one and three years, to



open up to others again. This demonstrates the seriousness of the psychological wounds inflicted by sexual violence. It not only destroys a sense of security but also impacts victims' ability to establish social relationships, work, and continue their education.

Finkelhor and Browne (in Tower, 2002) identified at least four main categories of trauma impacts resulting from sexual violence. First, betrayal, which is the feeling of being betrayed by someone trusted when the perpetrator is someone close to the victim, such as a family member or teacher. Second, traumatic sexualization, which is sexual trauma that causes victims to experience confusion about their own sexuality. Many victims then develop negative views or excessive fear of future sexual activity. Third, powerlessness, or a sense of helplessness, where victims feel they have no control over their bodies and lives, leading to feelings of low self-esteem and hopelessness. Fourth, stigmatization, which is the social burden when victims are viewed as despicable, dirty, or blamed by their environment. This stigma often leads victims to choose silence rather than seek justice.

Sexual violence also has a direct impact on a nation's development. Women who are victims of sexual violence often experience reduced participation in social and economic activities due to the trauma they experience. They lose self-confidence, experience limitations in access to education and employment, and face barriers to political and cultural participation. Bagong (2010) emphasized that sexual violence against women is a serious barrier to development because it erodes the potential of half the nation's population. In other words, if the state fails to address sexual violence, it will not only lose the future of individual victims, but also the potential for national development as a whole.

In a legal context, the definition of sexual violence in Indonesia is still evolving. The classic Criminal Code (KUHP) does not recognize the term "sexual harassment," but instead uses the terms "indecent acts" or "sexual assault." This term refers to acts deemed to violate morality, etiquette, and prevailing societal norms. However, this narrow definition has generated considerable debate because it does not encompass all forms of sexual violence that occur in practice. Consequently, various specific regulations have been enacted, such as the Child Protection Law, the Domestic Violence Law, and the Pornography Law. While each law has its own focus, they all demonstrate a legal awareness that sexual

violence is a serious problem that must be firmly regulated.

Based on the above description, it can be concluded that sexual violence is a multidimensional problem that requires a simultaneous legal, social, psychological, and cultural approach. In terms of definition, both the WHO and national regulations have provided a comprehensive understanding. In terms of impact, victims experience profound trauma that impacts their lives long-term. From a development perspective, sexual violence hinders community participation, especially women, in national development. All of this demonstrates that sexual violence is not merely a moral violation, but a serious violation of human rights. Therefore, preventing and addressing sexual violence requires a strong commitment from the state and society, ensuring that victims receive adequate protection and perpetrators receive appropriate sanctions.

## **B. Implementation of Criminal Penalties Against Perpetrators of Sexual Violence**

The application of criminal penalties to perpetrators of sexual violence is one of the greatest challenges facing Indonesia's criminal justice system. Sexual violence, as an attack on human honor and dignity, causes not only physical harm but also lasting psychological harm. Therefore, the state is obligated to provide adequate legal protection for victims and impose strict sanctions on perpetrators. In practice, the application of criminal penalties faces complex dynamics, ranging from the construction of articles in the Criminal Code (KUHP), the creation of specific laws on sexual violence, to variations in court decisions that often spark public debate.

In the Criminal Code, the provisions governing sexual violence are not explicitly defined as sexual harassment, but rather as "rape" and "indecent acts." Article 285 of the Criminal Code explicitly states:

*"Anyone who by using violence or the threat of violence forces a woman to have sexual intercourse with him, shall be punished for committing rape and shall be punished by imprisonment for a maximum of twelve years."*

This article is the primary basis for criminal penalties in rape cases. Meanwhile, Article 289 of the Criminal Code states:

*"Anyone who by violence or threat of violence forces someone to commit or allow an obscene act to be committed shall be punished for*

*committing an obscene act and be sentenced to a maximum of nine years in prison."*

These two articles show that Indonesian criminal law has from the beginning placed sexual coercion and indecent acts as prohibited acts that are subject to severe penalties.

However, despite the existence of formulated articles, the reality on the ground shows that sexual violence still often escapes the law. Many cases stop at the investigation or prosecution stage because the evidence is deemed weak, or even because of social pressure for victims to withdraw their reports. This demonstrates that legal norms alone are insufficient without a serious commitment from law enforcement officials. According to Waluyo (2004), the function of criminal law is not only to threaten sanctions but also to ensure that these rules are actually enforced to provide a deterrent effect. Otherwise, criminal law loses its function as a tool for protecting society.

In response to the rise in sexual violence cases and civil society pressure, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) was enacted. This law represents a significant step forward, as it contains more comprehensive regulations, including definitions of various forms of sexual violence, victims' rights, and victim-oriented handling mechanisms. Article 4 of the TPKS Law, for example, specifically identifies nine forms of sexual violence, including non-physical sexual harassment, physical sexual harassment, forced contraception, forced marriage, sexual torture, sexual exploitation, sexual slavery, electronic-based sexual violence, and other acts of sexual violence regulated by law. This formulation significantly broadens the scope of legal protection for victims compared to the Criminal Code, which only covers rape and indecent acts.

The existence of the TPKS Law also reinforces the state's commitment to prioritizing victims. Article 67 regulates victims' rights, including the right to treatment, protection, and rehabilitation. This provision aligns with Irfan's (2011) view, which emphasizes that victim protection is at the heart of the modern criminal justice system. Therefore, criminalizing perpetrators is not only aimed at imposing sanctions but also ensuring that victims receive adequate justice and rehabilitation.

Despite increasingly stringent regulations, the practice of sentencing perpetrators of sexual violence continues to face obstacles. Variations in judicial decisions are a particular concern. In

some cases, child rapists were sentenced to only six months in prison, even though the maximum penalty under the Criminal Code is twelve years. Such lenient sentences raise serious questions about the consistency of judicial officials in providing legal protection. According to Sudarto (1990), judges do have the freedom to impose sentences as long as they fall within the minimum and maximum limits stipulated by law, but this freedom should be exercised with consideration for the public's sense of justice.

The application of criminal penalties to perpetrators of sexual violence cannot be separated from the debate on human rights. Some argue that the death penalty or other severe punishments for perpetrators contradict human rights principles. However, in the context of Indonesian law, Article 28J paragraph (2) of the 1945 Constitution states that

*"In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law with the sole aim of ensuring recognition and respect for the rights and freedoms of other people."*

This means that the perpetrator's human rights cannot be used to disregard the victim's rights. Therefore, severe punishment for perpetrators of sexual violence remains legitimate as long as it is intended to protect the victim and the wider community.

Furthermore, Muladi and Barda Nawawi (1984) explained that criminal law has a dual function: as a repressive tool to punish perpetrators, and as a preventive tool to prevent future crimes. In the context of sexual violence, punishment must be able to fulfill both functions. If punishment is viewed solely as revenge, the preventive goal will not be achieved. Conversely, if punishment is too light, perpetrators will not be deterred and society will not feel protected. Therefore, a balance between repressive and preventive aspects is key in the application of punishment.

Furthermore, developments in international law have also influenced perspectives on sexual violence. International instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by Indonesia through Law No. 7 of 1984, affirm the state's obligation to protect women from all forms of discrimination, including sexual violence. This obligation reinforces the national legal position that sexual violence is not merely a domestic issue but also part of an international commitment that must be fulfilled.

With a national and international legal framework, the application of criminal penalties to perpetrators of sexual violence should be more consistent. However, the reality on the ground shows that many cases still face obstacles, both during the investigation, prosecution, and trial stages. The case of Agus SP Banurea in Kabanjahe, for example, illustrates how a perpetrator convicted of persuading a child to have sex with him was ultimately sentenced to only eight years in prison and a fine of ten million rupiah. While this sentence is not light, many believe it does not adequately reflect justice, given the impact on the victim (Pribadi & Zarzani, 2024).

The overall description above demonstrates that the application of criminal penalties to perpetrators of sexual violence in Indonesia still faces significant challenges. Existing regulations are relatively adequate, particularly with the enactment of the TPKS Law, but implementation in the field remains often inconsistent. Varying court decisions, challenges in obtaining evidence, and stigma against victims present significant obstacles. Therefore, a stronger commitment from law enforcement officials to consistently enforce the rules, along with public support to eradicate the culture of victim-blaming, is needed. This way, criminal penalties can truly serve as a means of legal protection and justice for victims of sexual violence.

### **C. Major Obstacles to the Implementation of Criminal Penalties Against Perpetrators of Sexual Violence in the Current Legal System**

Obstacles in the application of criminal penalties to perpetrators of sexual violence are a fundamental problem that continues to plague the Indonesian legal system. Despite the development of regulations, from the Criminal Code to Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), many victims still struggle to obtain justice. These obstacles arise from various aspects, including regulations, law enforcement officials, the judicial process, community culture, and even the psychological factors of victims. This complexity often causes sexual violence cases to stall or even end without clarity, despite clear regulations that can ensnare perpetrators.

One of the most prominent obstacles is the protracted legal process, or undue delay. Many sexual violence cases take a long time to process, from the investigation stage to prosecution and even to court decisions. This situation is very detrimental to victims, as it prolongs their

psychological suffering and opens up opportunities for perpetrators to intimidate them. The Indonesian Legal Aid Foundation (YLBHI) noted that delays in the legal process in sexual violence cases not only drain victims' energy but also undermine public trust in the judicial system. According to Bari (2023), delayed justice is essentially the same as failed justice, so the legal system must be able to ensure the swift and appropriate resolution of cases.

Besides delays, another obstacle is the difficulty in establishing evidence. Sexual violence often occurs in private or isolated spaces without witnesses, making direct evidence difficult to obtain. Victims are also often reluctant to report immediately due to shame, fear, or pressure from their environment, resulting in the loss or weakening of physical evidence. In many cases, the victim's testimony is the sole source of evidence, but it is often questioned by law enforcement. In fact, Indonesian criminal procedure law allows for the use of victim testimony as valid evidence as long as it is supported by other relevant evidence. However, in practice, victims are often treated as if they are the ones who must prove their own guilt. This situation aligns with Hitipeuw's (2015) observation that weak evidence is the main reason why many sexual violence cases are abandoned midway.

The absence of specific articles regulating certain forms of sexual crimes was also a major obstacle before the enactment of the TPKS Law. The Criminal Code only regulates rape and indecent acts, leaving other forms of sexual violence, such as verbal harassment, online sexual exploitation, or forced contraception, unaffected. This left law enforcement officials confused about determining the appropriate articles to prosecute perpetrators. Eddyono (2017) described this situation as a legal vacuum, often leaving victims without optimal protection. The enactment of the TPKS Law does partially address this gap, but its implementation still requires public awareness and consistency from law enforcement agencies across the region.

Another equally serious obstacle is the intimidation experienced by victims. Many victims experience threats, either directly from the perpetrator or indirectly from the perpetrator's family or other parties. These threats discourage victims from pursuing legal proceedings, with some even withdrawing their reports due to the threat to their safety. In some cases, intimidation also comes in the form of

economic pressure, for example, victims are forced to reconcile for fear of losing their jobs or financial support. According to Irfan (2011), protection for victims should not only include physical protection, but also social and economic protection to encourage victims to pursue legal proceedings to completion.

Lack of support from the victim's immediate environment is also a major obstacle. The culture of victim blaming remains deeply rooted in society. Victims are often viewed as the instigator of sexual violence because of their dress, behavior, or relationship with the perpetrator. This stigma leads many victims to choose silence rather than face negative judgment from family, friends, or the community. Finkelhor and Browne (in Tower, 2002) explain that stigmatization is one of the most serious impacts of sexual violence, as it not only psychologically injures victims but also cuts off much-needed social support. Without community support, the already challenging legal process becomes even more difficult for victims to navigate.

Obstacles also arise from overlapping regulations. Before the TPKS Law was passed, regulations regarding sexual violence were scattered across various laws, such as the Child Protection Law, the Domestic Violence Law, and the Pornography Law. Each law had different definitions and scopes, often leaving law enforcement officials confused about choosing the appropriate article. There have even been differing court decisions in cases with similar characteristics, simply because judges interpreted articles from different laws. This demonstrates the importance of the TPKS Law as a *lex specialis* that provides legal certainty. However, as Zaidan (2015) notes, the existence of a special law does not automatically eliminate implementation obstacles, as it remains dependent on the quality of law enforcement officers implementing it.

One example of a case illustrating the obstacles in criminal enforcement is the case in Kabanjahe, Tanah Karo, involving the defendant Agus SP Banurea. In this case, the perpetrator was proven to have legally persuaded a child to engage in sexual intercourse, yet was only sentenced to eight years in prison and a fine of ten million rupiah, with a subsidiary sentence of four months in prison. This verdict sparked debate because it was considered not to reflect a sense of justice, given the significant impact on the victim. This case demonstrates how, despite the legal process, the final outcome is often disappointing to the public (Pribadi & Zarzani, 2024).

Institutionally, coordination between law enforcement officials remains weak. Police, prosecutors, and judges often work in silos without establishing strong synergy. As a result, handling sexual violence cases can seem convoluted and biased toward victims. Muladi and Barda Nawawi (1984) remind us that criminal law should be enforced with sociological considerations in mind, not just legal formalities. This means that law enforcement officials must understand the victims' plight and prioritize their protection.

These obstacles collectively demonstrate that the application of criminal penalties to perpetrators of sexual violence does not solely depend on the text of the law. Cultural, psychological, structural, and institutional factors play a significant role in determining the success of law enforcement. Therefore, the necessary solutions must be multidimensional. From a regulatory perspective, the TPKS Law needs to be widely disseminated so that law enforcement officers understand and consistently apply it. From the victim's perspective, a more comprehensive protection mechanism is needed, including psychological support and legal aid. From a societal perspective, the culture of victim-blaming must be eradicated through education and public campaigns. This way, obstacles to the application of criminal penalties can be reduced, and the legal system can truly function to protect victims and uphold justice.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

The punishment of defendants in cases of sexual violence, which is essentially the death penalty and other penalties such as fines, restitution, and so on, does not conflict with human rights according to Article 28J paragraph (2) and Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The existence of various laws and regulations governing sexual violence does not mean that the existing regulations are adequate. On the contrary, existing regulations tend to be scattered in general forms of crime, and there are even regulations that do not specifically view sexual violence as gender-based violence. Some of the formulations are very problematic and create uncertainty and even obstacles for victims in processing the violence they experienced, as discussed below.

Obstacles include protracted legal proceedings (undue delay), lack of evidence, the



absence of articles addressing specific sexual crimes, intimidation from perpetrators, and a lack of support from the victim's immediate environment. The government should be more prudent in addressing laws governing sexual violence, as the numerous laws that regulate sexual violence create numerous obstacles to prosecuting perpetrators.

## REFERENCE LISTAN

- Amalia, M. (2019). Crimes of Sexual Violence (Rape) Against Children: Impact and Handling in the Jurisdiction of Cianjur Regency. *Mimbar Justitia Law Journal*, 6.
- APPLICATION OF RESTORATIVES TO CHILDREN OF CRIMINAL OFFENDERS (STUDY AT POLDA NORTH SUMATRA)* [TR Zarzani](#)- ... International Conference of Science Technology and ..., 2022
- Bagong, S. d. (2010). *Violence Lurks Against Children*. Surabaya: Lutfansah Mediatama.
- Bari, YE (2023). Application of Criminal and Social Sanctions for Perpetrators of Sexual Violence. *Hakim: Journal of Law and Social Sciences*, 194.
- [Criminal Act of Sexual Abuse Against Children Based on Law Number 35 Of 2014 and Aceh Qanun Number 6 Year 2014](#) B Personal, [R Zarzani](#)- Proceedings of the International ..., 2024 - [ojs.multidisciplinarypress.org](#), The criminal offense of sexual harassment against children is a serious crime regulated under Law No. 35 of 2014 concerning Child Protection and Aceh Qanun no. 6 of 2014 ...
- [Criminal acts of corruption procurement of goods and services of local governments through electronic procurement services \(Ipse\)](#)..., F Halawa, S Tandiono, [TR Zarzani](#)- ... Research and Critics ..., 2021 - [researchgate.net](#)
- Eddyono, MR (2017). Towards Strengthening Victims' Rights in the Draft Law on the Elimination of Sexual Violence. Institute for Criminal Justice Reform.
- H Aspan, *International Journal of Research and Reviews* 7 (6), 40 - 47
- Hitipeuw, AL (2015). A Legal Review of Victimology of the Impact of the Absence of an Anti-Sexual Violence Law in the Framework of Protecting Victims of Sexual Violence. Bandung: UNPAS.
- <https://www.mpr.go.id/berita/Hambatan-dalam-Proses-Hukum-Kasus-Kekerasan-Seksual-Harus-Memicu-Percepatan-Lahirnya-UU-TPKS>
- I Risdawati, TR Zarzani*- *International...*, 2023 [proceedings.unefaconference.org](#)
- Irfan, AW (2011). Protection of Victims of Sexual Violence (Advocacy for Women's Human Rights). Bandung: Refika Aditama.
- [Juridical Review Of Health Service Facilities Based On Law No 17 Of 2023](#)
- Lamintang, P. (1984). *Basics of Indonesian Criminal Law*. Bandung: Sinar Baru.
- Prasetyo, T. (2010). *Criminal Law*. Jakarta: Rajawali Press.
- National Seminar on Arranging Legislation for the Development of National Law 1 (1), 71-82, [SWOT Analysis of the Regional Development Strategy City Field Services for Clean Water Needs](#), H Aspan, F Milanie, M Khaddafi, *International Journal of Academic Research in Business and Social Sciences* 5 ...
- Sudarto. (1990). *Criminal Law I*. Semarang: Sudarto Foundation.
- [The Effect of Public Participation, Transparency, and Accountability on the Efficiency of the Distribution of the School Operational Support Funds in Tebing Tinggi City](#)(Case ...) H Aspan, F Milanie, AK Sari, Malang State University International Conference on Education for Economics ...
- The rapid advancement of technology is seen as one of the right and effective methods to increase the transparency of public information access, by implementing an online system for ...
- [The Role of Legal History in the Creation of Aspirational Legislation in Indonesia](#)
- This research is a juridical review of Health Service Facilities based on Law Number 17 of 2023. This study aims to analyze and interpret the legal provisions contained in the law ... [The Role of the Indonesian National Police in Law Enforcement from a Legal Sociology Perspective](#), H Aspan
- Utami, VP (2022). *Criminal Law for Perpetrators of Sexual Harassment*. Jakarta: Constitutional Law Student, Faculty of Sharia and Law, UIN Syarif Hidayatullah.
- Waluyo, B. (2004). *Crime and Criminalization*. Jakarta: Sinar Grafika.
- Zaidan, MA (2015). *Towards Reforming CRIMINAL LAW*. Jakarta: Sinar Grafika.