



SINERGI
LEGAL PUBLISHER



Comparative Analysis of Efforts to Prevent Sexual Violence and Legal Protection for Women in the Criminal Code and Sexual Violence Crime Law (UU NO. 12 of 2022)

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Abstract

Sexual violence in Indonesia is an increasing issue, as data from the National Commission on Violence Against Women in Annual Records (CATAHU) shows. This research focuses on a comparative analysis between the Criminal Code (KUHP) and Law no. 12 of 2022 concerning Criminal Sexual Violence (UU TPKS) in the context of preventing and protecting women from sexual violence. This research is important considering the high rate of sexual violence and the lack of effective legal protection for victims, especially women. This research also examines how these two regulations contribute to women's autonomy over their bodies and sexuality.

This research uses a normative legal method with a descriptive analytical approach. The focus is a comparative analysis of legal norms in the Criminal Code and the TPKS Law. The data used is secondary, including primary legal materials such as the Criminal Code and the TPKS Law, as well as secondary and tertiary legal materials including books, journals and scientific articles. The analysis was carried out descriptively qualitatively to interpret the data and draw relevant conclusions. Legislative and comparative approaches make it possible to evaluate the effectiveness and fairness of existing regulations in the context of preventing sexual violence and legal protection for women.

Research Results Legal protection for women from sexual violence in Indonesia is regulated by Law (UU) Number 12 of 2022 concerning the Crime of Sexual Violence, which provides a legal framework for preventing, handling, protecting and recovering victims. This includes intergovernmental coordination and community engagement. The 1945 Constitution and the Human Rights Law also provide a legal basis for the protection of victims. The Criminal Code contains articles related to sexual violence, including rape and obscenity. The Law on the Elimination of Domestic Violence and Child Protection provides additional legal protection. The PPPA Ministerial Regulation also provides regulations for the protection of women and children. The TPKS Law, as a response to increasing sexual violence, regulates nine types of criminal acts of sexual violence with details of criminal penalties and fines. This includes non-physical and physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence.

The old Criminal Code and Law no. 1 of 2023 concerning the new Criminal Code also regulates obscene acts. Proving sexual harassment in criminal law uses five types of evidence according to the Criminal Procedure Code. Efforts to increase the implementation of the TPKS Law depend on the understanding and professionalism of law enforcement officials, as well as improving key factors in law enforcement.

Keywords: *Prevention of Sexual Violence, Legal Protection of Women, Criminal Code vs TPKS Law*

INTRODUCTION

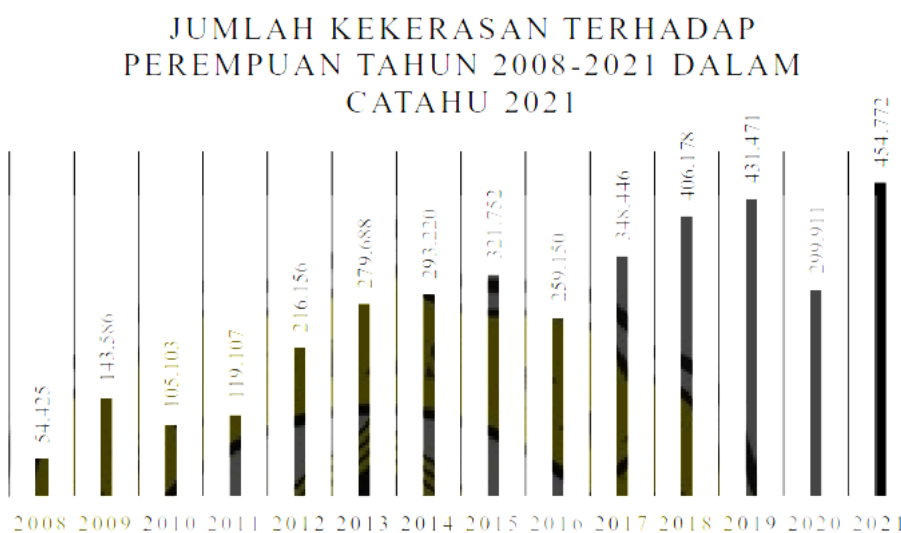
Sexual violence may sound familiar to your ears. Many cases of sexual violence have occurred recently, where according to data presented by the National Commission on Violence Against Women in the 2019 Annual Notes (hereinafter abbreviated as CATAHU), out of a total of 11,105 cases of violence against women that occurred in the personal or household realm (KDRT), there were 2,807 cases. or 25% of them are sexual violence,(National Commission on Women, 2020)Meanwhile, in the community or public domain, out of a

total of 3,602 cases of violence against women, 2,070 cases or 58% of them were sexual violence. CATAHU 2020 noted that of the 6,480 cases of violence against women that occurred in the personal or domestic violence sphere, 1,983 cases or 30% of them were sexual violence. (National Commission on Women, 2021) Meanwhile, of the 1,731 cases of violence against women that occurred in the community or public domain, 962 cases or 55% were sexual violence. This of course makes society anxious, especially women who tend to be more vulnerable to becoming victims of sexual violence, although it does not rule out the possibility that men can also become victims of sexual violence.

Talking about sexual violence, it is necessary to first know the definition of sexual violence itself. Sexual violence according to Witriyatuljauhariyah in the women's journal.org, namely: (Witriyatuljauhariyah, 14 July 2016)

all kinds of behavior that connotes or leads to sexual matters that are carried out unilaterally and are not expected by the person who is the target, thereby causing negative reactions such as shame, anger, hatred, offense, and so on in the individual who is the victim of the harassment.

Sexual violence itself is very diverse. Based on the results of monitoring carried out by the National Commission on Violence Against Women (Komnas Perempuan) for 15 years (1998-2013), there were at least 15 types or forms of sexual violence: rape, sexual intimidation (including threats or attempts at rape), sexual harassment, exploitation sexual relations, trafficking of women for sexual purposes, forced prostitution, sexual slavery, forced marriage (including divorce), forced pregnancy, forced abortion, forced contraception and sterilization, sexual torture, inhumane and sexually nuanced punishments, harmful sexual traditional practices or discriminating against women, and sexual control (including through discriminatory rules based on morality and religion).



Based on the graph displayed in CATAHU 2021, the level of violence against women experienced a fluctuating graph, and continued to increase from 2016 to 2019. Over a period of 12 years (counting from 2008-2019), the number of violence experienced by women increased to 792% or almost eight times, however, the increase in this figure does not purely indicate that more and more women in Indonesia experience violence every year, but could occur due to increased awareness and courage of victims to report the acts of violence they experience.

The rate of violence against women had decreased by 31.5% as recorded in CATAHU 2020, this was due to the Covid-19 pandemic which was hitting Indonesia, where at that time, the complaint service model was deemed not ready or adequate to be used during this period. Covid-19 pandemic, while CATAHU 2021 recorded a significant increase in the rate of violence against women, in fact 2021 was the year with the highest rate of violence against women in the last 14 years. The increase in the number of violence against women in 2021 is possible due to the better use of information and communication technology compared to 2020, where in 2021 online complaint services were available, as well as the existence of an e-court justice system.



Diagram 1 Diagram Jumlah Kekerasan terhadap Perempuan berdasarkan Ranah pada Tahun 2021 dalam CATAHU 2021

Violence against women can also occur both in the personal and public spheres. Based on data collected by the National Commission on Violence Against Women through service institutions, BADILAG (Religious Justice Agency), and direct complaints through the National Commission on Violence Against Women, 338,496 cases were obtained which indicate the areas most at risk for women experiencing violence. Of the total 338,496 cases, 335,399 or 99% of cases occurred in the personal realm, 3,045 cases occurred in the community realm, and 52 cases occurred in the state realm. This is still the same as in previous years, where the personal domain always occupies the highest position in terms of violence against women, and quite a few of them even experience sexual violence.

The problem apart from the high rate of sexual violence that is often faced by women victims of sexual violence is the lack of attention and protection in the courts. For example, in a trial where the victim is confronted directly with the perpetrator when the judge wants to confirm the act of sexual violence that occurred. In fact, as a victim (of any crime), of course his mental condition or state is still shaken and unstable as a result of the events he has just experienced, and quite a few are even traumatized, however, when they want to seek justice and protection, they are instead confronted directly. with the perpetrator. Facts regarding the condition or state of mind of the victim seem to be ignored, where law enforcement is considered more important and takes priority when compared to the condition or state of mind of the victim. (Sulistiyowati Irianto and Antonius Cahyadi, 2008)

Based on research conducted by the Indonesian Judicial Monitoring Society, Faculty of Law, University of Indonesia (MaPPI-FHUI), in deciding a case where the victim is a woman, judges often do not pay attention to the situation and condition of the victim, and it is not uncommon for judges to be biased in assessing victims of sexual violence based on using the victim's sexual history in considering the decision.

If the victim is no longer a virgin, the perpetrator can be given a lighter sentence, or in some cases the perpetrator can even be released from the law. The large number of cases of sexual violence that occur in Indonesia shows that the state still has a duty to eradicate perpetrators of sexual violence. As previously presented data and graphs show that the number of cases of violence against women tends to continue to increase every year. Therefore, to address this problem, special attention is certainly needed in handling cases of violence against women, because after all, no one has the right to be treated inhumanely, whether by family, friends or other people, as stated in Article 1, Article 2, and Article 5 of the Universal Declaration of Human Rights (UDHR) which essentially states that all people are born free and have equal rights, are entitled to all the rights and freedoms stated in the UDHR, and must not be tortured or treated cruelly.

Indonesia previously had a legal framework that regulated sexual violence, especially through Articles 285 and 289 in the Criminal Code (KUHP) and 406-414 in the New Criminal Code, which focused on acts of rape and obscenity. However, in the development of social reality, the types of sexual violence have developed far beyond what is regulated in the Criminal Code. This is reflected in the 2020 CATAHU report which shows the existence of various forms of sexual violence such as forced abortion, cyber gender-based violence

(KBGS), sexual slavery, sexual exploitation, marital rape (rape within marriage), and incest (sexual relations between individuals who are in a relationship blood or family). The main problem lies in the fact that these broader forms of sexual violence are not specifically regulated in the Criminal Code. As a result, victims of sexual violence, especially women, often do not receive justice and adequate legal protection. In this context, perpetrators of sexual violence tend to benefit from the absence of clear legal regulations, which should be able to convict them of their acts of sexual violence.

In connection with the increasing development of types of sexual violence and the lack of protection for victims of sexual violence in Indonesia, the DPR in its plenary session on April 12 2022 finally passed the Draft Law on Criminal Acts of Sexual Violence (RUU TPKS) into Law Number 12 of 2022 concerning Crimes. Criminal Sexual Violence (TPKS Law). The TPKS Law regulates 9 (nine) criminal acts of sexual violence which were previously not criminal acts or were only partially regulated, such as criminal acts of non-physical sexual harassment, criminal acts of physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence.

Sexual violence against women is a global issue that receives serious attention from various parties, including governments, non-governmental organizations and the international community. In Indonesia, sexual violence against women is still a serious problem and has not been fully resolved. This is not only related to acts of physical violence, but also to women's autonomy over their bodies and sexuality. Women's autonomy over their bodies and sexuality is a basic right that must be respected and protected by law. However, violations of these rights still frequently occur, whether in the form of sexual violence, sexual exploitation, or discrimination and control over women's bodies and sexuality.

In an effort to prevent and protect women from sexual violence, the Indonesian government has issued various regulations and laws, such as the Criminal Code (KUHP) and Law (UU) Number 12 of 2022 concerning the Crime of Sexual Violence. The Criminal Code is the criminal law in force in Indonesia which regulates various types of criminal acts, including sexual violence. Meanwhile, Law Number 12 of 2022 is a law that specifically regulates criminal acts of sexual violence.

With the existence of Law Number 12 of 2022, it is hoped that there will be more specific and comprehensive legal protection for victims of sexual violence. However, further analysis still needs to be carried out to find out whether this law covers and provides adequate protection for women's autonomy over their bodies and sexuality. Apart from that, it is also necessary to examine whether this law is effective in preventing acts of sexual violence, and how it is implemented in providing legal protection for women victims of sexual violence. With Discussion Focus on How does the TPKS Law prevent sexual violence and protect women victims of sexual violence? And how can the Criminal Code and the TPKS Law realize women's autonomy over their bodies and sexuality?

METHOD

The research conducted on "Comparative Analysis of Efforts to Prevent Sexual Violence and Legal Protection for Women in the Criminal Code and the Sexual Violence Crime Law" is a normative legal study, prioritizing analysis of legal norms in the Criminal Code and Law no. 12 of 2022. The method used is analytical descriptive, with the aim of describing and analyzing phenomena and circumstances related to sexual violence and legal protection for women. This research utilizes a statutory and comparative approach, analyzing and comparing the provisions in the Criminal Code and Law no. 12 of 2022, to determine the effectiveness and fairness of existing regulations. The research data collected is secondary in nature, including primary legal materials such as the Criminal Code and Law no. 12 of 2022, as well as secondary and tertiary legal materials such as books, journals and scientific articles. Data analysis was carried out in a descriptive qualitative manner, with a focus on understanding and interpreting the meaning of the data to reach relevant conclusions and recommendations.

RESULTS AND DISCUSSION

Legal Basis for Sexual Violence and Legal Protection of Women

Legal protection for women from sexual violence in Indonesia is regulated by several laws and regulations. One of the most fundamental is Law (UU) Number 12 of 2022 concerning the Crime of Sexual Violence. This law provides a legal framework for preventing, handling, protecting and restoring the rights of victims of

sexual violence. This law focuses on coordination between the Central Government and Regional Governments as well as international cooperation to prevent and deal effectively with victims of sexual violence. Apart from that, this law also regulates community involvement in the prevention and recovery of victims to create an environment free from sexual violence. (Law Number 12 of 2022)

The Indonesian Constitution, UUD 1945, also provides a legal basis for the protection of victims of sexual violence. Article 28G and Article 28I of the 1945 Constitution state that every person has the right to self-protection, honor, dignity and a sense of security as well as protection from the threat of fear of doing or not doing something, including the right not to be tortured or subjected to discriminatory treatment. Law Number 39 of 1999 concerning Human Rights also states everyone's right to live, not be tortured, and not be enslaved, which includes protection from sexual violence.

The Indonesian Criminal Code (KUHP) also contains articles relating to sexual violence. This includes articles that regulate damage to decency and decency, rape, obscenity, human trafficking, and forced abortion. For example, Articles 285, 286, 287 and 288 of the Criminal Code regulate the act of rape in various aspects. Apart from that, Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection also provide legal protection for victims of sexual violence in the domestic context and against children.

Meanwhile, the Minister of Women's Empowerment and Child Protection Regulation (Permen PPPA) provides further regulations for the protection of women and children from gender-based violence and sexual violence. This includes protection for women experiencing domestic violence and human trafficking. For example, Article 1 Paragraph 6 of the PPPA Ministerial Regulation explains that Violence Against Women (KTP) includes actions that cause physical, sexual and psychological suffering to women. Overall, these laws and regulations form a comprehensive legal framework to protect women from sexual violence in Indonesia, although there is still room for improvement and more effective implementation.

The following is a summary of legal regulations relating to the prevention of sexual violence and legal protection for women in Indonesia:

1. Law Number 12 of 2022 concerning Criminal Sexual Violence: This law regulates the prevention of all forms of sexual violence, handling, protection and restoration of victims' rights. This law also emphasizes coordination between the Central and Regional Governments as well as community involvement in the prevention and recovery of victims of sexual violence.
2. Article 28G and Article 28I of the 1945 Constitution: These articles underline everyone's right to self-protection, honor, dignity and security, including protection from sexual violence.
3. Law Number 39 of 1999 concerning Human Rights: Article 4 of this Law confirms everyone's right to live, not be tortured, and not be enslaved, which includes protection from sexual violence.
4. Criminal Code (KUHP): The Criminal Code has several articles that regulate sexual violence, such as Articles 285, 286, 287, and 288 concerning rape, as well as Articles 289, 290, 292, 293, and 294 concerning obscenity.
5. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT): This law regulates sexual violence in the domestic context, including rape or forced sexual intercourse.
6. Law Number 35 of 2014 concerning Child Protection: This law regulates sexual violence against children, with special articles such as Articles 76D and 76E concerning rape and molestation of children.
7. PPPA Ministerial Regulation Number 2 of 2022 concerning Standards for Protection Services for Women and Children: This regulation provides a guarantee of protection for women and children from all forms of sexual violence.
8. PPPA Ministerial Regulation Number 13 of 2020 concerning Protection of Women and Children from Gender-Based Violence in Disasters: This Ministerial Regulation regulates special protection for women and children in disaster situations.

Prevention of Sexual Violence in Law no. 12 of 2022

The long journey of the TPKS Bill, which was originally a PKS initiated by the National Commission on Violence Against Women in 2012, came to light after approximately 10 years of its fate being left in limbo. It is hoped that this regulation will be able to answer various problems of sexual violence crimes which continue to occur in various modes.

The results of the 2021 National Women's Life Experience Survey conducted by the Ministry of PPPA, the Central Statistics Agency and the Demographic Institute of the University of Indonesia found that 1 in 19 women (aged 15-64 years) had experienced sexual violence other than their partner. The 2021 National Survey of Life Experiences of Children and Adolescents also found that 4 out of 100 boys and 8 out of 100 girls aged 13-17 years in urban areas had experienced sexual violence in any form throughout their lives. Meanwhile, 3 out of 100 boys and 8 out of 100 girls aged 13-17 years in rural areas have experienced sexual violence in any form throughout their lives.

The presence of the TPKS Law is a concrete manifestation of the state's presence in efforts to prevent and deal with all forms of sexual violence. This law will protect and restore victims, enforce the law, rehabilitate perpetrators, create an environment without sexual violence, and ensure that sexual violence does not occur again.

To optimize the prevention and handling of cases of sexual violence, the TPKS Law which was passed by the DPR regulates nine types of TPKS which are regulated in detail in Article 4 paragraph 1 of the TPKS Law, namely:

1. Non-physical sexual harassment,
2. physical sexual harassment,
3. Contraceptive coercion,
4. forced sterilization,
5. forced marriage,
6. sexual torture,
7. sexual exploitation,
8. sexual slavery,
9. and electronic-based sexual violence.

Each type of criminal act of sexual violence has been regulated along with details of the criminal punishment, including fines for the perpetrator. Explained as follows:

1) Nonphysical Sexual Harassment

Non-physical sexual harassment is regulated in Article 5 of the TPKS Law which reads:

"Any person who commits non-physical sexual acts aimed at the body, sexual desires and/or reproductive organs with the intention of degrading a person's dignity based on sexuality and/or morality, shall be punished for non-physical sexual harassment, with a maximum imprisonment of 9 (nine) month and/or a maximum fine of IDR 10,000,000.00 (ten million rupiah)."

Referring to the explanation of the article, what is meant by non-physical sexual harassment are statements, gestures or activities that are inappropriate and lead to sexuality with the aim of humiliating or humiliating. Article 5 of the TPKS Law regulates that perpetrators of non-physical sexual harassment can be sentenced to up to 9 months in prison and a maximum fine of Rp. 10,000,000.

2) Physical Sexual Abuse

Article 6 a of the TPKS Law reads:

"Any person who commits physical sexual acts aimed at the body, sexual desire, and/or reproductive organs with the intention of placing someone under his or her control unlawfully, either inside or outside marriage, is subject to a maximum prison sentence of 12 (twelve) years and/or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah)."

Based on the information in Article 6, perpetrators of physical sexual harassment can be subject to a crime of up to 12 years in prison and a fine of up to Rp. 300,000,000.

3) Coerced Contraception

Coercion of contraception is regulated in Article 8 of the TPKS Law which reads:

"Any person who commits an act of forcing another person to use contraceptives by means of violence or threats of violence, abuse of power, misdirection, fraud, creating or taking advantage of conditions of incapacity which can result in temporary loss of reproductive function, shall be punished for forcing contraception, with imprisonment a maximum of 5 (five) years and/or a maximum fine of IDR 50,000,000.00 (fifty million rupiah)."

Referring to Article 8, a person who forces another person to use contraceptives to the point that the person temporarily loses their reproductive function can be subject to a maximum prison sentence of 5 years and a fine of IDR. 50,000,000.

4) Forced Sterilization

Forced sterilization is regulated in Article 9 of the TPKS Law which reads:

"Any person who commits an act of forcing another person to use contraceptives by means of violence or threats of violence, abuse of power, misdirection, fraud, creating or taking advantage of a helpless condition which can result in permanent loss of reproductive function, shall be punished for forced sterilization, with a maximum imprisonment 9 (nine) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah)."

This provision stipulates that a person who forces another person to use contraception to the point that the person's reproductive function is permanently lost or in other words forces sterilization can also be declared to have committed a criminal act of sexual violence.

5) Forced Marriage

Forced marriage is regulated in Article 10 of the TPKS Law which reads:

"Every person who unlawfully forces, places someone under his or another person's authority, or in his power to carry out or allow a marriage to be carried out with him or with another person, shall be punished for forcing a marriage, with a maximum imprisonment of 9 (nine) years and/or criminal a maximum fine of IDR 200,000,000.00 (two hundred million rupiah)."

The forced marriages referred to here include child marriages, forced marriages in the name of cultural practices, and forced marriages between victims and perpetrators of rape.

6) Sexual Torture

Sexual torture is regulated in Article 11 of the TPKS Law which reads:

Every official or person acting in the capacity of an official or person acting under the direction or knowledge of an official commits sexual violence against a person with the aim of:

- a. intimidation to obtain information or confessions from that person or a third party;
- b. persecution or punishment for acts suspected or committed; and/or
- c. humiliating or degrading for reasons of discrimination and/or sexual abuse in all its forms, shall be punished for sexual torture, with a maximum imprisonment of 12 (twelve) years and/or a maximum fine of IDR 300,000,000 (three hundred million rupiah).

7) Sexual Exploitation

Sexual exploitation is regulated in Article 12 of the TPKS Law which reads:

"Any person by violence or threat of violence or by abusing one's position, authority, trust, trust arising from deception or relationship of circumstances, vulnerability, inequality, helplessness, dependency of a person, debt bondage or giving payments or benefits with the intention of gaining profit, or exploiting sexual organs or other bodily organs of that person for the purpose of sexual desire with him or with another person, shall be punished for sexual exploitation, with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of IDR 1,000,000,000, 00 (one billion rupiah)".

8) Sexual Slavery

Sexual slavery is regulated in Article 13 of the TPKS Law which reads:

"Every person who unlawfully places someone under his or another person's power and makes them helpless with the intention of exploiting them sexually, shall be punished for sexual slavery, with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)".

9) Electronic Based Sexual Violence

Electronic-based sexual violence is regulated in Article 14 of the TPKS Law which reads: Every person without the right:

- a. recording and/or taking images or screenshots that are sexually charged against the will or without the consent of the person who is the object of the recording or image or screenshot;
- b. transmitting electronic information and/or electronic documents that contain sexual content against the recipient's will, aimed at sexual desires; and/or
- c. carrying out stalking and/or tracking using an electronic system against a person who is the object of electronic information/documents for sexual purposes, shall be punished for committing electronic-based sexual violence, with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 200,000,000 .00 (two hundred million rupiah).

Apart from prison sentences and fines that are regulated for these types of sexual violence. Article 16 states that there are additional criminal provisions that can be imposed on perpetrators, namely:

- a. Revocation of child custody or revocation of pardon;
- b. Announcement of the perpetrator's identity; and/or

- c. Confiscation of profits and/or assets obtained from criminal acts of sexual violence.

A form of legal protection that is also regulated in the TPKS Law is that victims of crimes of sexual violence have the right to receive restitution²⁷. Restitution is the payment of compensation charged to the perpetrator of a crime based on a court decision that has permanent legal force, for material or immaterial losses suffered by the victim or their heirs. In the provisions of the TPKS Law, restitution can be given in four (4) forms, namely:

- a. Compensation for loss of wealth or income;
- b. Compensation for losses incurred as a result of suffering directly related to the crime of sexual violence;
- c. Reimbursement of medical and/or psychological treatment costs; and/or
- d. Compensation for other losses suffered by the victim as a result of the crime of sexual violence.

The TPKS Law also regulates the rights of victims of sexual violence. Articles 65 and 67 state that victims have the right to treatment, protection and recovery since the crime of sexual violence occurred. This indicates that fulfilling victims' rights is the state's obligation and the state must carry it out in accordance with the conditions and needs of victims.

The effectiveness of the implementation and enforcement of the law on criminal sexual violence in the field will depend greatly on the understanding and professionalism of law enforcement officials in interpreting the law and showing siding with victims. Therefore, it is necessary to accelerate the preparation of derivative regulations to support the effectiveness of the implementation of this law.

Sexual Violence in the Old Criminal Code and Law no. 1 of 2023 concerning the New Criminal Code

Please be aware of the provisions [Criminal Code](#) old which was still valid at the time this journal was published and [Law 1/2023](#) which will come into effect 3 years from the date of promulgation, namely in 2026, the term sexual harassment is not recognized but the term used is obscene acts which are regulated in:

Old Criminal Code	New Criminal Code Law no. 1 of 2023
<p>Article 281 Threatened with a maximum imprisonment of 2 years and 8 months or a maximum fine of IDR 4.5 million:</p> <ol style="list-style-type: none"> 1. anyone who intentionally and openly violates morality; 2. whoever deliberately and in front of other people is there against his will, violates decency. 	<p>Article 406 Any person who:</p> <ol style="list-style-type: none"> a. violating decency in public; or b. violating decency in front of other people who are present without the wishes of those present. <p>Explanation of Article 406 letter a What is meant by "violating decency" is committing acts of displaying nudity, genitals and sexual activities that are contrary to the values that exist in society in the place and time the act is committed.</p>
<p>Article 289 Any person who, by force or threat of violence, forces a person to commit or allows an obscene act to be committed, is threatened with committing an act that attacks the honor of morality, with a maximum imprisonment of 9 years.</p>	<p>Article 414</p> <ol style="list-style-type: none"> (1). Any person who commits an obscene act against another person of the same or different gender: <ol style="list-style-type: none"> b. in public, be punished with a maximum imprisonment of 1 year and 6 months or a maximum fine of category III, namely IDR 50 million. c. forcibly with violence or threats of violence, shall be punished with a maximum imprisonment of 9 years; or d. which is published as pornographic content, is punishable by a maximum imprisonment of 9 years. (2) Every person who, by force or threat of violence, forces another person to commit an obscene act against him, shall be punished with a maximum imprisonment of 9 years.

So, perpetrators of sexual harassment can be charged using the fornication article as regulated in Articles 289 to 296 of the Criminal Code or Articles 414 to 422 of Law 1/2023 while still paying attention to the provisions on the elements of each criminal act. If the evidence is deemed sufficient, the public prosecutor will present charges against the perpetrator of sexual harassment before the court.

Proving Sexual Harassment in Criminal Law

Answering your other question, proof of sexual harassment in criminal law is based on Article 184 [Criminal Procedure Code](#), using 5 types of evidence, namely:

- a. witness statements;
- b. expert information;
- c. letter;
- d. instruction;
- e. defendant's statement.

Regarding witnesses, the Constitutional Court through [MK Decision 65/2010](#) expanding the meaning of the definition of witness in the Criminal Procedure Code, so that what is meant by witness also includes people who can provide information in the context of investigation, prosecution and trial of a criminal act which they have not always heard for themselves, seen for themselves and experienced for themselves.

So, in the event of sexual harassment, the evidence above can be used as evidence. For cases related to fornication or rape, one of the pieces of evidence is usually used in the form of a Visum et Repertum. According to the Legal Dictionary by JCT Simorangkir, Rudy T. Erwin and JT Prasetyo, Visum et Repertum is a statement/report from an expert regarding the results of his examination of something, for example a corpse, etc. and this is used as evidence in court.

Looking at the definition above, Visum et Repertum can be used as documentary evidence, as regulated in Article 187 letter c of the Criminal Procedure Code. The use of Visum et Repertum as evidence is also regulated in Article 133 paragraph (1) of the Criminal Procedure Code:

In the event that an investigator, in the interests of justice, handles a victim who has been injured, poisoned or died, allegedly because of an incident that constitutes a criminal act, he or she has the authority to submit a request for expert information to a judicial medical expert or doctor or other expert.

If the post-mortem does not show any signs of violence, then it is best to look for other evidence that can prove the crime. In the end, the judge will decide whether the defendant is guilty or not based on the evidence in court.

Legal Reform Efforts to Prevent Sexual Violence against Women

National Police investigators stated that operational guidelines and technical guidelines for the TPKS Law were absolutely necessary to avoid multiple interpretations between APH in implementation. 21 The initiation of the formation of operational operational guidelines and technical guidelines must start from central agencies, then be passed down in lower institutional regulations. This is needed to avoid interpretation by each law enforcement institution. This must be started immediately by central institutions (such as the National Police Headquarters, the Supreme Court) because if it is not done immediately, there will be no technical implementation arrangements for the content of the TPKS Law so that its implementation can be more optimal in dealing with criminal acts of sexual violence. This is so that the TPKS Law does not suffer the same fate as Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which does not yet have adequate technical implementing regulations. This has led to various interpretations by law enforcement officials regarding the SPPA Law.

Another obstacle in implementing the TPKS Law is APH's lack of understanding of the TPKS Law. According to the Ministry of Women's Empowerment and Child Protection (PPPA) and the National Women's Commission, one of the obstacles is that the law has not been socialized to all law enforcement officials.

Based on this, there are at least 2 big jobs that the government needs to work on to complete. First, the establishment of technical implementation rules. Then Second, carry out targeted socialization of the TPKS Law, especially for APH and other parties involved in law enforcement, as users of this regulation.

Theoretically, it can be observed that what is happening in the field, namely the low level of implementation of law enforcement for criminal acts of sexual violence, can also be understood because efforts have not been comprehensive in improving key factors that can influence the effectiveness of law enforcement itself. As stated by Soerjono Soekanto, there are 5 factors that influence law enforcement, and these five factors are

closely related to each other, because they are the essence of law enforcement, and are also a benchmark for the effectiveness of law enforcement:

- 1) Legal factors, namely interference originating from laws or regulations.
- 2) Law enforcement factors, namely the parties who form and implement the law.
- 3) Facilities or facilities factors that support law enforcement
- 4) Community factors, namely the environment in which the law applies or is applied.
- 5) Cultural factors, namely as a result of work, creativity and feelings that are based on human intention in social life.

The issue of the absence of implementing regulations for the TPKS Law is one of the legal factors that needs to be resolved immediately by the government. Based on Article 91 of the TPKS Law, implementing regulations should be established no later than two years after this Law is promulgated. In this case, there are 3 Government Regulations and 4 Presidential Regulations as technical regulations that need to be issued. The three PPs are PP concerning TPKS Victim Assistance Funds; PP concerning Prevention of TPKS and Handling, Protection and Recovery of TPKS Victims; and PP concerning Coordination and Monitoring of the Implementation of Prevention and Handling of TPKS. Meanwhile, the four presidential regulations consist of the Presidential Decree concerning the Implementation of Integrated Services for the Protection of Women and Children at the Center (Ministry of PPPA); Presidential Decree concerning the Implementation of Integrated Education and Training for Law Enforcement Officials, Government Service Personnel, and Service Personnel at Community-Based Service Provider Institutions; Presidential Decree concerning Regional Technical Implementation Units for the Protection of Women and Children (UPTD PPA); as well as the Presidential Decree concerning the National Policy for Eradicating TPKS.

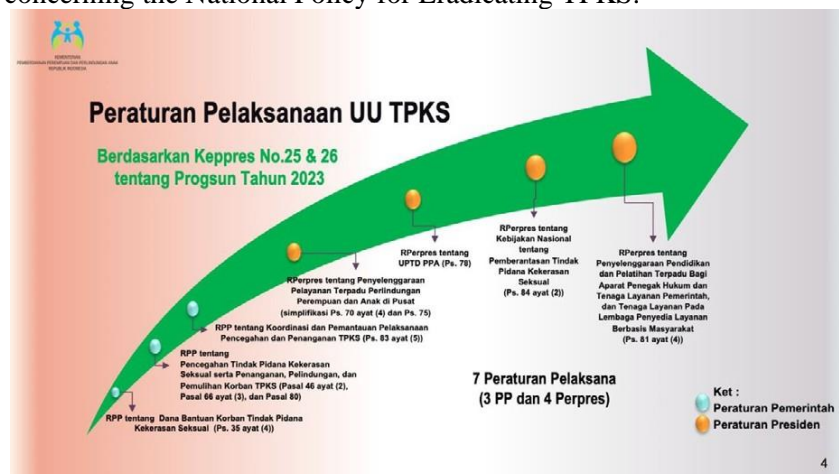


Figure I. Implementing/Technical Regulations for the TPKS Law Source: KemenPPA RI, 2022.

From the law enforcement side, of course the APHs who carry out the role of the integrated criminal justice system need to improve their competence and understanding of the TPKS Law. This also includes other parties who have a role in implementing the TPKS Law, namely the Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA) and the Witness and Victim Protection Agency (LPSK). The Ministry of Health must also increase the capacity of psychologists in treating victims through special training related to TPKS. This competency issue is even an obligation, because it has been confirmed in Article 21 of the TPKS Law regarding the provisions that must be fulfilled by investigators, public prosecutors and judges handling TPKS cases, namely: (1) Investigators, public prosecutors and judges handling criminal cases Sexual Violence must meet the following requirements:

- a. have integrity and competence regarding handling cases from a human rights and victims perspective; And
- b. has attended training related to handling cases of criminal acts of sexual violence.

Then in paragraph (2) it is regulated that in the event that there is no investigator, public prosecutor or judge who fulfills the requirements as intended in paragraph (1), the case of a crime of sexual violence is handled by an investigator, public prosecutor or judge who is experienced in handling crimes. Sexual Violence Crimes are based on decisions determined by authorized officials. In addition, Article 81 emphasizes that apart from law

enforcement officers, education and training are also provided for government service personnel and service personnel at community-based service provider institutions.

Then from the infrastructure factor too

needs great attention. The political direction of the government budget needs to be more supportive of the means and facilities for implementing the TPKS Law. Currently, for example, digital forensic tools for proving cases of Electronic-Based Sexual Violence (KSBE) or Online Gender-Based Violence (KBGO) are only owned by the Regional Police and National Police Headquarters, so for such cases they still need the support of adequate digital technology facilities to identify perpetrators who are not identity (anonymous). For the record, there are at least three forms of online gender-based violence in Indonesia that are widespread, and of course require digital forensic tools to reveal them:(Kathryn Kirsten Voges et al, 2022)

1. Technology-facilitated sexual violence. In this case the perpetrator committed sexual violence (obscenity, (Muhamad Romdoni, Yasmirah Mandasari Saragih, 2021) sexual torture, rape, exploitation of someone's body) against another person via the internet in real time. These interactions are paid and exclusive. One case occurred in Aceh. A group of students were trapped by a network of perpetrators into sending their naked pictures via social media. Then they are sexually exploited via the internet and forced into prostitution in the real world. In Bojonegoro, East Java, a teacher took photos of victims naked, then sold them on the internet. He then also forced the victims to engage in sexual activities both on the internet and face to face.
2. Distribution of sexual content. This action takes the form of distributing photos, videos and screenshots of conversations between the perpetrator and the victim. The content distributed contains intimate and pornographic elements of the victim. An example of this case is the distribution of naked photos of 14 teenage girls in South Lampung. They got to know the perpetrator on social media and were then threatened and persuaded to take naked photos. These threats and actions were carried out with the aim of obtaining sexual and financial benefits from the victim.
3. Revenge with pornography. This form of violence involves parties who have intimate relationships. The perpetrator disseminates intimate content with the victim in order to defame the victim, take revenge, or gain financial gain. One example of this case is the distribution of intimate photos of ex-girlfriends by students in Banyumas, Central Java. The perpetrator is usually the victim's husband, ex-husband, ex-boyfriend, mistress, or boss.

Article 79 of the TPKS Law also requires the Central Government and Regional Governments to implement the Prevention of Criminal Acts of Sexual Violence in a fast, unified and integrated manner, one of which is through the field of "public facilities and infrastructure". Provincial and district/city regional governments are also required to form Regional Technical Implementation Units for the Protection of Women and Children (UPTD PPA) which carry out the Handling, Protection and Recovery of Victims, Victim Families and/or Witnesses, to carry out this task, UPTD PPA certainly needs support infrastructure facilities.

Likewise, regarding special recovery funds or victim assistance funds, based on Article 30 of the TPKS Law, it is stipulated that victims of criminal acts of sexual violence have the right to receive restitution and recovery services. Regarding victims with disabilities, they also have the right to receive adequate accessibility and accommodation to fulfill their rights in accordance with the provisions of statutory regulations (Article 66 paragraph (2) of the TPKS Law). Regarding the availability of services and infrastructure, this is also confirmed in PP Number 39 of 2020 concerning Adequate Accommodation for Persons with Disabilities in the Judicial Process. Facilities for people with disabilities are not just about providing wheelchairs. Rather, they include: access to personal assessment; infrastructure appropriate to various disabilities, such as computer screen readers and visual aids; competent companion services for disability issues; translator as needed; special rooms and quiet rooms for psychosocial disabilities, as well as clinical psychologist or psychiatrist services.

Judging from community factors, community sensitivity is needed to participate in helping law enforcement by reporting, whether as a victim or if they know there is information regarding victims of sexual violence in their environment. This will certainly be very helpful in stopping TPKS by sexual predators who may continue to look for their victims. Article 85 of the TPKS Law also emphasizes the role of the community in implementing TPKS prevention, including: cultivating literacy about TPKS, socializing laws and regulations related to TPKS, and creating environmental conditions that can prevent the occurrence of TPKS.

Lastly, the cultural factor, namely the values of community legal awareness and APH which must be built, so that there is no longer any hesitation in implementing the TPKS Law. The societal culture that still tolerates the practice of child marriage must also be eradicated and stopped/prevented with the TPKS Law. Child marriage in the TPKS Law is a form of forced marriage. Article 10 paragraph (2) of the TPKS Law regulates

that forced marriage includes: a. Child marriage; b. forced marriage in the name of cultural practices; or c. forced marriage of the victim to the perpetrator of the rape. (Asmita, Yasmirah, 2023)

Based on a research report on child marriage conducted by the Center for Studies and Advocacy on Child Protection and Quality of Life (Puskapa) together with UNICEF, BPS and Bappenas in 2020, Indonesia is ranked 10th highest in child marriage in the world. Data from the Central Statistics Agency (2020) recorded that 3.22 percent of women married under the age of 15, while 27.35 percent of women married at the age of 16-18 years.

These five factors, in the theoretical paradigm of "influencing factors in law enforcement" put forward by Soerjono Soekanto, can certainly be understood and agreed on in one sense regarding the effectiveness of law enforcement, in this context it is linked to the problem of implementing the TPKS Law. Thus, the idea that there are still several inhibiting factors which are the reason why the implementation of the TPKS Law has not been optimal can certainly be agreed upon by various parties, including legal thinkers. However, in other paradigms this can be seen differently, one of which is in the paradigm or theory of Progressive Law.

In essence, the idea of Progressive Law wants to encourage the legal worker community to dare to make breakthroughs in implementing the law, and not only be shackled by positivistic and legal analytical thinking. This means that various existing weaknesses, including the lack of technical regulations, facilities and so on, can be considered not an obstacle, as long as the law enforcement officers themselves can find ways to overcome existing obstacles to achieve legal goals, namely justice.

Optimizing the law enforcement process no longer has to be confined to the logic of rigid regulations that shackle law enforcers, but rather in the light of "progressive freedom of conscience." By using "spiritual intelligence", law enforcers can carry out a progressive breakthrough action agenda against law enforcement bottlenecks. In other words, this is a matter of progressive behavior from law enforcers who are expected to participate in "changing and becoming". (Hyronimus Rheti, 2016) The progressive legal paradigm initiated by the legal scholar Satjipto Rahardjo is a phenomenal idea aimed at law enforcement officials, especially judges, so that they are not shackled by legal positivism which has so far given many injustices to justisiaben (seekers of justice) in enforcing the law because law enforcement is a series of processes to explain fairly abstract values, ideas and ideals which are the objectives of the law. Legal goals or legal ideals initiate moral values, such as justice and truth. These values must be able to be realized in real reality. The existence of law is recognized if the moral values contained in the law can be implemented or not. (Satjipto Rahardjo, 2009).

CONCLUSION

The TPKS Law was born to complement legal regulations related to sexual violence that already existed and were in effect previously, including the Criminal Code, the PKDRT Law, and the Child Protection Law, because the Criminal Code, the PKDRT Law, and the Child Protection Law do not yet regulate criminal acts of sexual violence in their entirety from upstream to downstream. The TPKS Law presents provisions that are more holistic and prioritize the protection of victims so that it becomes a new innovation in the provisions against criminal acts of sexual violence. Ironically, after more than a year of enactment, the implementation of the TPKS Law has not been implemented optimally and evenly by APH. Among several main obstacles in implementing the TPKS Law are the lack of implementing regulations and a lack of socialization which has resulted in minimal understanding of APH regarding the TPKS Law. If these obstacles can be eliminated, then law enforcement of the TPKS Law can be implemented more optimally. It is hoped that effective crime prevention, both penal and non-penal, can eradicate sexual violence which is currently increasingly common in society.

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