

Criminal Policy on the Implementation of Penalties for Combating Sexual Violence in the Indonesian Criminal Law System

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Abstract. *Sexual violence is a prevalent issue in various societies, transcending time and space, affecting environments such as family, education, community, professional, and social settings. The threat to vulnerable individuals, especially women, induces a universal sense of fear. Violence against women is not limited to physical acts or threats but also includes psychological and social harm. This study employs a legal sociology approach, a legislative approach, and a conceptual approach, with a descriptive research specification aimed at obtaining a complete picture or description of the prevailing legal conditions in a particular place, the existing legal phenomena, or specific legal events occurring in society. The primary data used in this research is obtained directly from informants or resource persons. Additionally, secondary data is used, consisting of primary legal materials, secondary legal materials, and tertiary legal materials, collected through literature studies as supporting data that provide explanations for the primary data. Data collection techniques include interviews and document studies, analyzed qualitatively. Historically, criminal policy concerning sexual violence within the Indonesian criminal law system has existed since Indonesia's independence and continues to this day. However, addressing the legal substance is not sufficient; its implementation requires strengthening the legal structure and legal culture.*

Keywords: *Criminal; Enforcement; Policy; Sexual; Violence.*

1. INTRODUCTION

The widespread violence and harassment targeting women can undeniably be traced back to societal values that position women as inferior and weaker compared to men. Many view women as entities subjected to control, exploitation, and subjugation by men. The grim reality of sexual violence has persisted throughout history and continues to exist in modern society ¹. Sexual harassment is considered deviant because it involves pressuring someone into unwanted physical contact or forcing them to engage in sexual activity, making them the focus of unwanted attention. This misconduct includes inappropriate behaviors like touching sensitive areas or using obscene language, which are criminal offenses since the victims clearly do not appreciate being targeted by such actions or statements.

¹ Stephanus Turibius Rahmat, 'Memutuskan Mata Rantai Kekerasan Seksual Terhadap Anak Sebagai Upaya Perlindungan Terhadap Anak Secara Terpadu', *Jurnal Lonto Leok Pendidikan Anak Usia Dini*, 3.1 (2020), p. 1–15.

Criminal acts, which are defined by law as prohibited actions subject to legal sanctions, must meet certain conditions for their enforcement, including the imposition of penalties on those responsible for such actions. The definition of criminal acts, their various forms, criminal sanctions, and the application of those sanctions to offenders are all governed by criminal law. Sexual violence is one such prohibited act and is classified as a criminal offense under positive law.

Gender-based violence has become an increasingly prominent topic of discussion, marked by evolving methods and patterns, despite the challenges in formulating policies that adequately protect and meet the needs of victims and society. According to the Chair of the National Commission on Violence Against Women (Komnas Perempuan), Andy Yentriyani, 2,500 cases of violence against women were reported between January and July 2021, surpassing the 2,400 cases recorded in 2020 (LBH Admin, 2020).

Although both sexual harassment and rape are forms of sexual misconduct, they differ significantly. The key distinction lies in whether there is penetration of the male genitalia (penis) into the female genitalia (vagina). Rape occurs when a man forcibly inserts his genitalia into a woman's, while the absence of such penetration is categorized as sexual harassment. For example, if someone attempts but fails to achieve genital penetration due to intervention, yet touches a woman's body, including sensitive areas like the lips, breasts, or genitals, this would still be classified as sexual harassment, even if the intent was to commit rape.

The Indonesian Penal Code (KUHP) addresses sexual harassment in Chapter XIV on Crimes Against Decency, from Articles 289 to 296, referring to it as "indecent acts," which shows that indecent acts are synonymous with sexual harassment. The definition of indecent acts is broad, and perceptions of such acts vary according to region and society. Generally, touching someone's intimate areas without consent is considered indecent, although even touching an arm can be viewed as harassment depending on societal norms (Wikipedia, 2023).

In addition to the KUHP, other more specific regulations exist, such as Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT). Although various forms of sexual violence are regulated by law, the structure and scope remain limited. The legal framework has not fully adapted to the evolving nature of sexual violence in society. Investigations, legal proceedings, and court trials often disregard the rights of victims and tend to blame them. Moreover, proactive measures and community involvement are crucial to creating an environment free from sexual violence. Therefore, in addition to specialized laws addressing sexual violence, comprehensive criminal policies are necessary to ensure substantive and procedural legal certainty, addressing the evolving legal needs of society.

As times change, sexual violence cases have become more diverse in terms of their motives, making the current legal framework insufficient to protect victims. In 2015, Indonesia's House of Representatives (DPR) proposed a bill on sexual violence, which led to the enactment of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS). This law classifies nine types of sexual violence as criminal offenses, including sexual harassment, sexual exploitation, indecency, coercion to use contraception, sexual slavery, forced marriage, forced abortion, rape, and forced prostitution, with the majority of victims being women and the perpetrators being men. This highlights the need for

society to pay attention to gender-related factors in sexual violence cases, where women are typically the victims and men the perpetrators ².

The alarming number of sexual violence cases related to gender justice in Indonesia is particularly concerning due to the psychological impact on victims. The prevalence of such cases causes women to feel unsafe when gender justice is not properly upheld. In providing legal protection for women, Indonesia has established the National Commission on Violence Against Women (Komnas Perempuan), a state institution created as a national mechanism to eliminate violence against women. Komnas Perempuan was born out of civil society demands (especially women) to the government to fulfill the state's responsibility in responding to and addressing violence against women. The Commission aims to create conditions conducive to eliminating all forms of violence against women and upholding women's human rights in Indonesia while improving efforts to prevent and address violence against women and protect women's rights.

One of the biggest issues in cases of sexual violence arises when these cases are not handled properly, such as the 2012 assault and rape case reported to the Metro Tanah Abang Police in Jakarta, where the police released the perpetrator. According to the victim, the police pressured her to reconcile with the perpetrator by agreeing to marry him. Forced mediation by the police also occurred in the sexual assault case involving RW, handled by the Sub-directorate of State Security at the Metro Jaya Regional Police. Investigators continuously pushed for reconciliation and negotiation, frequently sending text messages and calling the victim's mother, stating that the perpetrator wanted to take responsibility by marrying the victim (Civil Society Network and Komnas Perempuan, 2020:74-75).

These two examples show that law enforcement (police) failed to handle sexual violence cases appropriately, leading to greater public concern. Violence against women in Indonesia should not always be viewed as acts preceded by physical violence or threats of violence. In some cases, involving women with limited education or knowledge, or whose status and position are unequal to men, incidents of violence should be viewed comprehensively. For instance, a woman who is unaware of the legal requirements for marriage may be misled into believing she is married to a man, only for him to exploit her for sexual relations.

Based on the explanation above, this paper seeks to examine the criminal policies on sexual violence and the enforcement of penalties according to the Indonesian criminal law system.

Theoretical Framework

1. Criminal Policy

Criminal policy (penal policy in English) or criminal politics (criminal policy) is the systematic, methodical, and coordinated effort of society aimed at addressing and reducing crime. This interpretation stems from Marc Ancel, who describes criminal policy as "the logical arrangement of society's control over crime." Similarly, G. Peter Hoefnagels explains that "criminal policy involves the systematic organization of society's

² Mark Yantzi, 'Kekerasan Seksual Dan Pemulihan: Pemulihan Bagi Korban', *Pelaku, Dan Masyarakat, Jakarta: Gunung Mulia*, 2009.

response to criminal activities." Hoefnagels also provides several definitions related to criminal policy: it requires a scientific study of responses to crime; represents a scientific approach to tackling criminal activities; serves as a scientific framework for shaping human behavior to prevent crime; and is a logical and comprehensive system of response to criminal offenses ³.

Sudarto offers three interpretations of criminal policy ⁴:

- a. In a narrow sense, it encompasses all principles and methodologies governing and responding to legal violations through criminal law;
- b. In a broader sense, it involves the entire law enforcement mechanism, including the operations of courts and police activities; and
- c. In its broadest sense, criminal policy refers to efforts made through comprehensive legal and institutional regulations aimed at upholding society's fundamental norms.

2. Sexual Violence

The Indonesian Penal Code (KUHP) does not define violence clearly, except in Article 89, which equates it with causing someone to become unconscious or helpless. Most acts considered violence under this article fall under specific chapters, such as Chapter XIX on Crimes Against Life, Chapter XX on Assault, and Chapter XXI on causing death or injury due to negligence.

The types of violence outlined in these chapters primarily concern harm to the body or life. Consequently, the KUHP does not recognize a definition of violence that includes areas beyond physical harm or life threats. This excludes forms of violence impacting an individual's mental well-being, financial authority, or violence related to reproductive organs or sexual acts ⁵.

The term "sexual" comes from the word "sex," which the Indonesian Dictionary (KBBI) defines as (1) gender, (2) matters related to sexual organs, such as intercourse, and (3) lust. C.P. Chaplin defines sex as ⁶:

- a. The inherent difference between male and female, or between organisms producing eggs and sperm;
- b. The process of reproduction; and
- c. Organic pleasure associated with genital stimulation.

Sexual violence refers to any behavior involving coercion, threats of sexual intercourse, torture, sadistic behavior, or neglect of the victim after such acts. According to Huraerah, sexual violence includes pre-sexual interactions between children and adults (involving language, physical touch, visual content, exhibitionism) as well as direct sexual contact

³ John Kenedi, *Buku Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum Di Indonesia* (Pustaka Pelajar, 2017).

⁴ M Ali Zaidan, 'The Policy of Granting Remission to Corruption Inmates in Order to Eradicate Corruption in Indonesia', *Jurnal Dinamika Hukum*, 16.1 (2016), p. 106–11.

⁵ Putu Eva Ditayani Antari, 'Pemenuhan Hak Anak Yang Mengalami Kekerasan Seksual Berbasis Restorative Justice Pada Masyarakat Tenganan Pegringsingan, Karangasem, Bali', *Jurnal Ham*, 12.1 (2021), p. 75.

⁶ Verlin Ferdina, 'Penegakkan Hukum Terhadap Pelecehan Seksual Melalui Teknologi Informasi (Cyber) Ditinjau Dari Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik', *Jurnal Panorama Hukum*, 4.2 (2019), p. 89–101.

(such as incest, rape, and sexual exploitation).

3. Indonesian Criminal Law System

The term "system" derives from the Greek word **systema**, meaning a cohesive entity composed of interconnected elements. Subekti defines a system as an organized structure, a unity of parts systematically arranged to achieve a specific goal ⁷.

From an etymological standpoint, a system refers to a grouping of parts or subsystems interconnected to form a whole. Muladi suggests interpreting the concept of a system in context, which includes physical systems (a collection of integrated elements working toward a particular objective) and abstract systems (an organized arrangement of interdependent ideas) ⁸.

The concept of a legal system goes beyond merely combining the direct meanings of "system" and "law." In legal science, the term "legal system" has its own significance. L.J. Van Apeldoorn emphasizes the complexity of defining "law," given its broad scope. Despite its pivotal role in regulating social and interpersonal interactions, law is not the sole force guiding human behavior. A clear understanding of diverse legal interpretations is crucial to avoid confusion in legal studies. Some definitions of law include:

- a. In the realm of knowledge, law manifests as a structured body of systematic understanding derived from reason and cognition;
- b. As a discipline, law constitutes a structured collection of teachings about reality or phenomena;
- c. As a rule, law functions as a guiding principle or standard for appropriate behavior; and
- d. As a legal order, law represents the framework and procedure of a body of written laws applicable within a specific temporal and spatial context ⁹.

J.H. Merryman, in his book **The Civil Law Tradition**, explains a legal system as a functional compilation of institutions, processes, and legal regulations—an operational framework consisting of legal institutions, procedures, and laws ¹⁰.

4. Criminal Law Enforcement

Criminal law enforcement governs the types of punishment (*strafsoort*), the severity of punishment (*strafmaat*), and the methods of carrying out punishment (*strafmodus*). It contains provisions that allow the application of punishment, as criminal law regulations cannot function independently and rely on individual enforcement. Sudarto highlights the absence of specific law enforcement legislation (*straf-vollzugesetz*), with reliance on existing regulations such as the **Gestichtenreglement** (*Staatsblad 1917-708*) and others ¹¹.

Normatively, Article 10 of the Penal Code outlines various types of punishment, which apply to offenses both within and outside the code. The new Indonesian Penal Code expands on these, distinguishing between punishments and actions. This study focuses specifically on the criminal law enforcement system as covered by the Penal Code and related laws.

⁷ Tofik Yanuar Chandra, 'Hukum Pidana', *Jakarta: PT. Sangir Multi Usaha*, 2022.

⁸ R Sugiharto, 'Sistem Peradilan Pidana Indonesia' (Semarang: Unissula Press, 2012).

⁹ Harsanto Nursadi, 'Sistem Hukum Indonesia', *Tangerang: Universitas Terbuka*, 2015.

¹⁰ Chandra.

¹¹ Ira Alia Maerani, 'Hukum Pidana & Pidana Mati', *SA Prees, Semarang*, 2018.

2. RESEARCH METHODS

This research employs an empirical legal research approach, specifically socio-legal research, which encompasses observing law in practical contexts and analyzing its function within society. As this research investigates real-life interactions within society, it aligns with a sociological approach to legal research. Essentially, this legal research is derived from existing realities in society, legal entities, or government institutions ¹².

Salim H.S. and Erlies Septiana Nurbaini define empirical legal research as the study and analysis of how individuals or society interact with the law, relying on primary data sources. Soerjono Soekanto and Sri Mamudji describe sociological (empirical) research as a legal investigation conducted through the examination of primary data. Satjipto Rahardjo emphasizes the importance of empirical legal research by stating that studying traffic regulations alone is insufficient to understand traffic law, necessitating direct observation on the road. Meanwhile, Peter Mahmud Marzuki introduces the concept of empirical legal research (socio-legal) as exclusively viewing law as a social phenomenon and examining it solely from an external perspective. Therefore, in socio-legal research, law is always associated with social issues. This type of research focuses on studying the behavior of individuals or communities regarding legal matters ¹³.

This research utilizes a sociological legal approach, legislative approach, and conceptual approach. It employs a descriptive research specification, which aims to provide a complete picture or description of the legal situation in a specific location, or about existing legal phenomena, or a particular legal event occurring in society ¹⁴.

The data used in this research include primary data, which is raw data obtained directly from the field and supplemented with field data gathered from informants or sources during 30 working days across several institutions, including the National Commission on Violence Against Women (Komnas Perempuan), the Indonesian Child Protection Commission (KPAI), the Ministry of Women Empowerment and Child Protection (KPPPA), Kalyanamitra Foundation, Jurnal Perempuan, and the Witness and Victim Protection Agency (LPSK). The selection of these six institutions as research locations is due to their involvement in addressing sexual violence. In addition to primary data, the researcher uses secondary data obtained through library studies as supporting data and to provide explanations for the primary data. The secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques in this study include interviews and document studies, with data analysis conducted qualitatively.

3. RESULTS AND DISCUSSION

3.1. Criminal Policy on the Regulation of Sexual Violence According to the Criminal Law System in Indonesia

Various criminal policies have been implemented to address sexual violence, including those related to substantive law. The initiation of criminal policy against sexual violence has existed since Indonesia's independence and the ratification of the 1945 Constitution. Although the 1945 Constitution does not explicitly address "sexual violence," it states in its preamble that every citizen has the right to be free from torture and the right to life.

¹² Muhaimin Muhaimin, 'Metode Penelitian Hukum', *Dalam S. Dr. Muhaimin, Metode Penelitian Hukum, Mataram-NTB: Mataram*, 2020.

¹³ Muhaimin.

¹⁴ Muhaimin.

Although the language in the preamble is abstract and broad, it was concretely translated into normative regulations a year later, with the promulgation of Law No. 1 of 1946 concerning the Criminal Code ¹⁵.

The Criminal Code explicitly regulates this issue in Chapter XIV on Crimes Against Morality. It includes five actions that can be classified as crimes against decency, namely rape (Articles 285 and 286), intercourse with minors (Articles 287-289), molestation of children (Articles 290, 294, and 296), trafficking in persons for sexual purposes (Article 297), and the provision of abortion services (Article 299).

In 1984, Indonesia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This convention mandates that states ensure equal treatment for men and women before the law (Article 3) and legislate laws to combat human trafficking and prostitution of women (Article 6) ¹⁶.

After the ratification of CEDAW, the National Human Rights Commission (Komnas HAM) was established in 1993. However, after its establishment, Komnas HAM did not have the authority to handle human rights violations. It was only during the reform era in 1998 that Law No. 39 of 1999 on Human Rights and Law No. 26 of 2000 on the Human Rights Court (Human Rights Court Law) were enacted. These legal instruments significantly impacted law enforcement, as various forms of sexual violence were categorized as serious human rights violations and could be prosecuted under the Human Rights Court Law ¹⁷.

Although children's rights have been included in Law No. 39 of 1999 on Human Rights (Human Rights Law), the fulfillment of the obligations and responsibilities of parents, families, communities, governments, and the state to effectively protect children requires a specific law on child protection. This law provides the legal framework for carrying out these duties and responsibilities (General Explanation of Law No. 23 of 2002 on Child Protection). Consequently, Law No. 23 of 2002 on Child Protection was enacted, which also regulates sexual violence against children as outlined in Articles 81 and 82 ¹⁸. In 2014, this law was amended by Law No. 35 of 2014, which more broadly regulates intercourse with children, indecent acts against children, and/or sexual exploitation of children, as stipulated in Articles 76D, 76E, 81 paragraph (1), and 82 paragraph (1) ¹⁹.

Following the enactment of the Human Rights Law and the Human Rights Court Law, Komnas Perempuan was established as a reform-driven initiative. This state human rights institution is tasked with monitoring and reporting gender-based human rights violations, promoting reform, formulating policies, and serving as a facilitator in addressing violence against women. The establishment of Komnas Perempuan marked a significant turning point in the elimination of violence against women. Subsequently, various laws were enacted to meet the needs of women, such as Law No. 23 of 2004 on

¹⁵ Maharani Mustika Rahayu, Tri Lisiani Prihatinah, and Pramono Suko Legowo, 'Perkembangan Perlindungan Hukum Perempuan Terhadap Kekerasan Seksual Di Indonesia', *Soedirman Law Review*, 5.2 (2023).

¹⁶ Laurensius Arliman, 'Komnas Ham Sebagai State Auxialiary Bodies Di Dalam Penegakan Hak Asasi Manusia Di Indonesia', *Jurnal Bina Mulia Hukum*, 2.1 (2017), p. 54–66.

¹⁷ Rahayu, Prihatinah, and Legowo.

¹⁸ Undang-Undang Nomor, 'Tahun 2002 Tentang Perlindungan Anak', 23AD.

¹⁹ Mujiburrahman Mujiburrahman, 'EKSPLOITASI SEKSUAL ANAK PERSFEKTIF-UNDANG UNDANG PERLINDUNGAN ANAK SEBAGAIMANA TELAH DIUBAH DENGAN UNDANG UNDANG NOMOR 35 TAHUN 2014 DAN PERUBAHAN KEDUA UNDANG UNDANG NOMOR 17 TAHUN 2016', *Jurnal Hukum Tri Pantang*, 6.2 (2020), p. 33–49.

the Elimination of Domestic Violence (PKDRT Law), Government Regulation No. 4 of 2006 on Cooperation for the Recovery of Domestic Violence Victims, and various other regulations²⁰. The PKDRT Law reflects significant progress in legal protection, extending protection not only to women but also to all family members. This law prohibits all forms of sexual coercion within the family, whether for commercial gain or specific purposes. The law ensures victims receive protection through provisions such as access to health services, confidentiality, social worker assistance, and spiritual guidance.

Following the PKDRT Law, Law No. 13 of 2006 on the Protection of Witnesses and Victims (PSK Law) was enacted, and two years later, the Witness and Victim Protection Agency (LPSK) was established as a direct result of the PSK Law. Subsequently, Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes (TPPO Law) was enacted. However, in addition to human trafficking, a new form of crime, pornography, has emerged in the modern era. With the ease of access to information, society can now easily access and become victims of pornographic content. Although the Criminal Code regulates pornography in Articles 282 and 283, these provisions are insufficient to curb the spread of pornographic material. Therefore, the legislature enacted Law No. 44 of 2008 on Pornography, which essentially prohibits the creation (Article 4 paragraph 2), distribution (Article 4 paragraph 1), use (Article 6), and modeling of pornographic content (Article 8) in all forms of media²¹.

In 2009, Law No. 36 of 2009 on Health was enacted, which also regulates restrictions on abortion, particularly for victims of rape. In 2014, Presidential Regulation Number 18 of 2014 on the Protection and Empowerment of Women and Children in Social Conflict was issued. This regulation outlines detailed procedures for rapid response protection, preventive services, and management of various forms of violence, addressing the basic and specific needs of women and children in cases of social conflict.

Several laws regulate various forms of sexual violence, but their scope remains limited. The limited scope of criminalization of sexual violence fails to address the various issues experienced by victims, including sexual harassment, exploitation, rape, forced contraception, forced abortion, forced marriage, human trafficking for prostitution, sexual torture, and sexual slavery. The absence of regulations addressing these forms of sexual violence in a comprehensive legal framework creates gaps for perpetrators to act without being held accountable²². Therefore, in 2022, Law No. 12 of 2022 on the Crime of Sexual Violence (UU TPKS) was enacted.

According to Rena Herdiyani, the urgent reason for the enactment of UU TPKS is that there was no comprehensive policy regulating sexual violence crimes, and the number of sexual violence victims continued to increase. Victims of sexual violence have long struggled to obtain justice due to various obstacles, ranging from legal culture to the handling of cases by law enforcement. The forms of sexual violence have also become increasingly complex and widespread, necessitating a *lex specialis* to provide detailed regulations so that there are no loopholes for sexual violence perpetrators to evade legal proceedings (Rena Herdiyani, interview, November 24, 2023).

According to Ratih Rachmawati, the urgency of the enactment of UU TPKS is based on the following (interview, December 18, 2023):

²⁰ Rahmat.

²¹ Rahayu, Prihatinah, and Legowo.

²² Nicola Henry and Anastasia Powell, 'Sexual Violence in the Digital Age: The Scope and Limits of Criminal Law', *Social & Legal Studies*, 25.4 (2016), p. 397–418.

- a. Philosophically, it is based on the reality that every individual has the right to protection from violence and the right to be free from torture or degrading treatment, as guaranteed in the 1945 Constitution;
- b. Sociologically, it is based on the reality that sexual violence contradicts divine and humanitarian values and disrupts societal security and peace; and
- c. Juridically, it is based on the reality that existing laws related to sexual violence (before the enactment of UU TPKS) were not optimal in providing prevention, protection, access to justice, and recovery, did not meet the needs of victims' rights, and were not comprehensive in regulating procedural law.

3.2. Criminal Policy on the Regulation of Sexual Violence from the Perspective of Criminal Procedure Law

The applicable procedural law in sexual violence cases refers to the Indonesian Criminal Procedure Code (KUHAP). In addition, Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA) is also applied, although it is only used if the perpetrator or victim is a minor (Kupipedia, 2024). Furthermore, UU TPKS also serves as formal law on sexual violence, complementing and refining KUHAP, as UU TPKS is a *lex specialis* with specific characteristics, including its special provisions on procedural law.

KUHAP is a system of legal procedures that generally governs criminal law enforcement, providing guidance to law enforcement officials in handling criminal acts. The procedures for handling sexual violence cases outlined in KUHAP have presented many challenges, including (Kupipedia, 2024):

- a. The Criminal Procedure Code (KUHAP) focuses on the rights of the defendant, leaving many of the victim's rights unfulfilled during the legal process. For instance, victim rights not covered by KUHAP include legal and psychological assistance, which are essential for them to prepare their involvement in criminal justice proceedings and to recover from the psychological impact or trauma they have experienced. Other rights include access to medical services addressing the physical effects of sexual violence, such as healthcare and prevention of sexually transmitted diseases or other medical consequences, and recovery. Additionally, KUHAP does not regulate the victim's right to information about the progress of case resolution, as this right is only granted to the suspect or defendant. However, the victim's awareness of the investigation results could assist them in providing input to investigators. Often, critical details that emerge during the investigation process are not communicated to the victim, and their understanding of what transpired should be considered and utilized to support the case in the criminal justice process.
- b. Due to the lack of provisions concerning victim rights, KUHAP fails to depict a victim-sensitive legal procedure. There are no special procedures for recording the testimony of victims of sexual violence, such as repeated questioning by investigators or interrogation by investigators not assigned to the case. Investigating officers, prosecutors, judges, and lawyers are not prohibited from asking questions that corner or retraumatize the victim, leading to further trauma, mistrust, and exhaustion, ultimately placing the victim in a cycle of revictimization. The absence of special examination rooms for victims during investigations and trials is not specifically regulated under KUHAP, although victims of sexual violence are required to have a safe and comfortable environment to provide their testimony. A separate waiting room for victims during trial schedules is not stipulated. However, many victims are reluctant to meet the perpetrator's family, who are also waiting for the trial to begin,

to avoid intimidation. Victims may experience further trauma during the trial process when giving testimony in front of the defendant.

- c. KUHAP also does not regulate the obligation of investigators, prosecutors, judges, lawyers, and the mass media to handle victims sensitively. These obligations include maintaining the confidentiality of the victim's identity and not publicizing the victim's case without their consent. Furthermore, in handling cases of violence against women, prosecutors rarely communicate with the victim, their family, or support officers before the trial process, as KUHAP does not regulate the prosecutor's authority to communicate with the victim, their family, or their support personnel. However, as a representative of the state advocating for the victim's interests in court, the public prosecutor should have a comprehensive understanding of the victim's needs throughout the legal process. Due to the absence of explicit provisions, prosecutors are often found not to advocate for the victim when questions that corner the victim arise from the defendant, defense counsel, or judges during the trial process.
- d. Regarding the burden of proof, which is relatively challenging for victims, KUHAP regulates evidence and stipulates that one witness is not enough and must be supported by other evidence. Often, the victim's testimony alone cannot serve as a basis to indicate violence, so additional witnesses other than the victim are required. However, based on experience, violence against women often occurs without direct witnesses. The enforcement of criminal penalties against individuals who commit sexual violence against children applies not only to adults but also to children who commit such acts. Therefore, the government has taken steps to prevent and address juvenile delinquency by enacting Law No. 3 of 1997 on Juvenile Courts, which was replaced by Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), aiming to protect the welfare of children involved in legal conflicts. The enactment of the Sexual Violence Crimes Act (UU TPKS) brought reforms not only in substantive law but also in the realm of criminal procedural law (formal law). Criminal procedural law, which regulates the procedures for enforcing substantive criminal law, underwent reform through UU TPKS, particularly in the fields of investigation, prosecution, and trial. This reform aims to complement and perfect Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP). One of the formal law updates in UU TPKS is related to evidence²³, which differs from the provisions in Article 184(1) of KUHAP, which states that valid evidence includes:
 - a. Witness testimony,
 - b. Expert testimony,
 - c. Documents,
 - d. Indications, and
 - e. Defendant testimony.

Article 24(1) of Law No. 12 of 2022 on Sexual Violence Crimes expands the definition of valid evidence to include:

- a. Evidence as stipulated in criminal procedure law;

²³ Moh Al-vian Zul Khaizar, 'Analisis Pembaharuan Hukum Pidana Dan Hukum Acara Pidana Dalam Undang-Undang Tindak Pidana Kekerasan Seksual', *Diktum: Jurnal Ilmu Hukum*, 10.1 (2022), p. 103–17.

- b. Other evidence in the form of electronic information and/or electronic documents as regulated by the provisions of legislation; and
- c. Physical evidence used to commit the crime of sexual violence or resulting from the crime, and/or objects or items related to the crime.

Additionally, there are also revisions related to document evidence. The scope of document evidence includes (Article 24(3) of Law No. 12 of 2022 on Sexual Violence Crimes):

- a. Certificates from clinical psychologists and/or psychiatrists/psychiatric specialists,
- b. Medical records,
- c. Forensic examination results, and/or
- d. Bank examination results.

The next update relates to witness testimony. Although KUHAP stipulates that witness testimony alone is insufficient to prove the defendant's guilt, as set forth in Article 185(2) of KUHAP, an exception is made in the Sexual Violence Crimes Law. According to Article 25(1) of UU TPKS, there is an exception to the principle of *unus testis nullus testis* (one witness is not a witness). Furthermore, in UU TPKS, *de auditu* witness testimony (testimony or information from hearing from others) is admissible as provided in Article 25(3). In terms of prosecution, the public prosecutor has the authority to hold preliminary meetings with witnesses and/or victims after receiving or obtaining the complete investigation results from the investigator. Furthermore, UU TPKS emphasizes the importance of upholding the victim's right to rehabilitation, both before and during legal proceedings, and afterward. Additionally, UU TPKS also prohibits the criminalization of both the victim and witnesses. This is stipulated in Article 69(g) of UU TPKS, which states that "victim and/or reporter protection from criminal prosecution or civil lawsuits for reported sexual violence crimes" must be ensured. More detailed comparisons of procedural law in UU TPKS and KUHAP can be seen in the table below.

Comparison of Procedural Law in UU TPKS and KUHAP

Aspek	Sexual Violence Crimes Act (UU TPKS)	Criminal Procedure Code (KUHAP)
Rights of victims, witnesses, and victims' families	<ul style="list-style-type: none"> • Formulating the rights of victims, witnesses, and victims' families • Formulating the rights of victims, witnesses, and victims' families to treatment, protection, and recovery 	KUHAP does not regulate the protection and rights of witnesses and victims.
Victim recovery	<ul style="list-style-type: none"> • Formulating the rights of victims to recovery, which include: <ul style="list-style-type: none"> a. Physical; b. Psychological; c. Economic; d. Social and cultural; e. Restitution • Formulating the implementation of victim 	KUHAP does not regulate the procedures for victim recovery.

	<p>recovery both before and after the criminal justice process</p> <ul style="list-style-type: none"> • Formulating the supervision of the implementation of recovery 	
The obligation to fulfill the rights of victims, victims' families, and witnesses.	Formulating the obligation of investigators, prosecutors, judges, and all parties involved in the judicial process to fulfill the rights of victims, victims' families, and witnesses.	Only a small portion, namely the reception of reports and legal assistance.
Prohibition of victim criminalization	To fulfill the right to protection, victims cannot be made suspects/defendants in criminal cases of defamation or other criminal cases that are part of the legal facts related to the sexual violence experienced by the victim	KUHAP does not explicitly regulate the prohibition of victim criminalization.
Specific requirements for investigators, prosecutors, and judges handling sexual violence cases	Formulating the requirements for investigators, prosecutors, and judges handling sexual violence cases: <ul style="list-style-type: none"> a. Possessing knowledge, skills, and expertise in victim handling with a human rights and gender perspective; b. Having completed training on criminal justice for sexual violence. 	KUHAP does not regulate
The burden of proof on the reported party or suspect is limited when they deny the victim's or the victim's family's report or accusation	This does not relieve the investigator or the investigating officer of the obligation to strengthen the evidence.	KUHAP does not regulate
Evidence	<p>Documentary evidence:</p> <ul style="list-style-type: none"> a. Clinical psychologist and/or psychiatrist/mental health specialist certificates; b. Medical records; c. Forensic examination results; and/or d. Bank examination results. 	In accordance with the document categories in Article 187 of KUHAP
	<p>Witness testimony:</p> <ul style="list-style-type: none"> a. Excluding the principle of unus testis nullus testis; 	<ul style="list-style-type: none"> • At least 2 witnesses according to Article 185 of KUHAP.

	b. Testimony de auditu is acceptable.	• Testimony de auditu is not acceptable.
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According to Article 23 of the Sexual Violence Crimes Act (UU TPKS), "TPKS cases cannot be resolved outside of the judicial process, except for child perpetrators as regulated by law." Referring to the content of Article 23, it shows that UU TPKS combines both penal and non-penal measures in addressing TPKS. The use of penal measures to handle TPKS indicates that all forms of sexual violence crimes as referred to in Article 4 paragraphs (1) and (2) of UU TPKS have been subject to criminalization.

UU TPKS also adopts non-penal measures in addressing TPKS, although they are limited to child perpetrators. According to the researcher, while these non-penal efforts are only directed at child offenders, they aim to improve certain social conditions, particularly those of the child, thereby preventing them from becoming criminal offenders and indirectly reducing crime through preventive actions.

4. CONCLUSION

Based on the discussion, the researcher concludes that criminal policies on sexual violence regulation within Indonesia's criminal law system have existed since Indonesia's independence and the enactment of the 1945 Constitution. This was followed by the promulgation of Law No. 1 of 1946 on the Penal Code (KUHP). In 1984, Indonesia ratified CEDAW, which was followed by the establishment of the National Human Rights Commission (Komnas HAM) in 1993, the enactment of the Human Rights Law, the Human Rights Court Law, and the Child Protection Law. Later, the establishment of the National Commission on Violence Against Women (Komnas Perempuan) was followed by the enactment of the Domestic Violence Law, the Witness and Victim Protection Law, the Trafficking in Persons Law, the Pornography Law, the ITE Law, the Health Law, Presidential Regulation No. 18 of 2014, and the enactment of UU TPKS. As for criminal policies on the implementation of sexual violence laws, it can be said that they began with the promulgation of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), the Juvenile Justice System Law (UU SPPA), and UU TPKS, which specifically complements KUHAP in handling sexual violence cases. The policies to combat sexual violence in UU TPKS are implemented through penal measures, except in the case of child perpetrators, where non-penal measures may apply. The researcher recommends the prompt drafting, enactment, and ratification of derivative regulations of UU TPKS, including Government Regulations on the Victims Assistance Fund, Government Regulations on the Prevention, Handling, Protection, and Recovery of TPKS Victims, Government Regulations on the Coordination and Monitoring of TPKS Prevention and Handling, Presidential Regulations on the Provision of Integrated Services for the Protection of Women and Children at the National Level, Presidential Regulations on Integrated Education and Training for Law Enforcement Agencies, Government Service Personnel, and Community-Based Service Providers, Presidential Regulations on the Regional Technical Implementation Units for the Protection of Women and Children (UPTD PPA), and Presidential Regulations on the National Policy for the Eradication of TPKS.

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