

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

## **Law Enforcement Against Criminal Acts of Sexual Violence Post Law Number 12 of 2022 Concerning Criminal Actions of Sexual Violence**

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**Abstract.** *The rise in cases of sexual violence, especially those experienced by women and children in Indonesia, is increasingly worrying. This research will discuss LAW ENFORCEMENT AGAINST CRIMINAL ACTS OF SEXUAL VIOLENCE POST LAW NUMBER 12 OF 2022. This research is a legal research, using normative (juridical) legal research methods. This legal research uses a statutory approach and a comparative approach. This research was carried out using primary legal materials, namely in the form of statutory regulations and secondary legal materials in the form of law books and legal journals related to the problem under study. This research uses library and internet studies in collecting legal materials. The crime of sexual violence is a crime that concerns human dignity and is a form of discrimination that must be eradicated and eliminated. Law enforcement against criminal acts of sexual violence in Law Number 12 of 2022 contains several reforms related to the procedural law for handling criminal acts of sexual violence. The aim of this different procedural law is to adapt it to the interests of victims of sexual violence, in the sense that the procedural law is made more victim-oriented*

**Keywords:** *Criminal; Law; Sexual Violence.*

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## 1. Introduction

The rise in cases of sexual violence, especially those experienced by women and children in Indonesia, is increasingly worrying. This criminal act of sexual violence needs to be handled immediately by the state, especially in relation to the special regulations of the Criminal Act of Sexual Violence. The handling of criminal acts of sexual violence is still carried out using a partial legal approach, and does not specifically refer to criminal acts of sexual violence. For example, perpetrators of sexual violence are still subject to the Articles of Rape and Morality in the Criminal Code, are subject to the Law on the Elimination of Crimes of Domestic Violence or are charged with the ITE law. Specific regulations related to criminal acts of sexual violence are still in the draft law stage.

The Draft Law on Criminal Acts of Sexual Violence has been passed into law by the House of Representatives in the Plenary Session which was held on 12 April 2022. The Law on Criminal Acts of Sexual Violence was later named Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Criminal Sexual Violence by the State Secretariat and stated in the State Gazette of the Republic of Indonesia for 2022 Number 120. The ratification of this Law is important because it is a legal umbrella in an effort to prevent, handle and comprehensively rehabilitate victims of sexual violence.

Acts of sexual violence experienced by women and children continue to increase. According to report data from the Indonesian Child Protection Institute (LPAI), throughout 2021 there were 1,735 reported cases of violence against children. Of this number, the majority of cases were experienced by girls (1,173 cases), boys (562 cases). Meanwhile, there were 557 cases of sexual violence throughout 2021, 240 cases of physical and psychological violence and 18 cases of sexual exploitation.<sup>1</sup>The number of cases of violence against children and women is also reported by data from the Ministry of Women's Empowerment and Child Protection, which states that the number of violence against women and children always increases every year from 2019 to 2021, where in 2019 there were 11,057 cases, and experienced the increase in 2020 was 11,279 cases and in 2021 there was another increase of 12,566 cases.<sup>2</sup>

<sup>1</sup><https://mediaindonesia.com/humaniora/461477/menutup-tahun-2021-lpai-buat-1735-kas-kekerasan-terjadi-pada-anak>, accessed on June 8 2022, at 14.24 WIB

<sup>2</sup><https://www.kemenpppa.go.id/index.php/page/read/29/2738/angka-kekerasan-terhadap-anak-tinggi-di-masa-pandemi-kemen-pppa-socialisasi-protokol-perlindungan-child>, accessed on June 8 2022, at 1.26 WIB

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The Sexual Violence Crime Law regulates 93 articles consisting of 12 chapters. The material contained in this Law includes: 1) General Provisions, 2) Types of criminal acts of sexual violence, 3) Other criminal acts related to criminal acts of sexual violence, 4) Investigation, Prosecution and Examination in Court Hearings, 5) Rights victims, victims' families and witnesses, 6) Implementation of Integrated Services for the Protection of Women and Children, 7) Prevention, coordination and monitoring, 8) Community and family participation, 9) Funding, 10) International cooperation, 11) Transitional provisions and 12) Closing.<sup>3</sup>

According to the opinion expressed by the Minister of Women's Empowerment and Child Protection, I Gusti Ayu Bintang Darmawati, stated that the passing of the Sexual Violence Crime Law is a concrete manifestation of the state's presence in protecting, preventing and dealing with all forms of sexual violence in society and efforts to in recovering and rehabilitating victims of sexual violence by strictly enforcing the law.<sup>4</sup>

Ratification of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence is an effort to protect and guarantee the human rights of Indonesian citizens, especially women and children. The Sexual Violence Crime Law is a concrete form of state guarantee to protect against all forms of violence and discrimination and provide a sense of security to the community. This effort is a mandate from the 1945 Constitution of the Republic of Indonesia and is in accordance with the state's foundation, namely Pancasila.

Apart from that, the Indonesian state also has a commitment to eradicate and eliminate all forms of violence and discrimination, especially against women and children and people with disabilities with the ratification of the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention), the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Rights of Persons with Disabilities, Optional Protocol and International Convention on the Rights of the Child, International Convention on the Sale of Children, Prostitution Children, and Child Pornography. Indonesia has also committed to upholding civil and political, economic, social and cultural rights, as stated in Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights (International Covenant on

<sup>3</sup> <https://icjr.or.id/sidang-paripurna-dpr-ri-12-april-2022-mengesahah-undang-undang-tindak-pidana-kekerasan-sexual-apa-important-uu-ini/>, accessed on June 8 2022 at 01.30 WIB

<sup>4</sup> <https://www.menpan.go.id/site/berita-terkini/berita-region/ruu-tpks-resmi-disahkan-menteri-pppa-apresiasi-sinergi-dan-dukungan-all-party>, accessed on June 8 2022 at 02.33 WIB

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Economic, Social and Cultural Rights). Culture) and Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights).<sup>5</sup>

The enactment of Law Number 12 of 2022 is very important and represents a new chapter in law enforcement against criminal acts of sexual violence in Indonesia, because this law emphasizes the principle of regulating the handling of criminal acts of sexual violence based on respect for human dignity and worth. , the principle of non-discrimination, paying attention to the interests of victims, realizing justice, benefits and legal certainty as well as treatment that is oriented towards victims of sexual violence. Apart from that, in the provisions of this Law there are new things related to procedural law in handling criminal acts of sexual violence.

Based on the description above, the author is interested in conducting a study with the title "Law Enforcement Against Criminal Acts of Sexual Violence Post Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence" Based on the background above, the author can formulate problems that will become a reference in this paper, namely: What is the law enforcement process for criminal acts of sexual violence in Law Number 12 of 2022 concerning Crimes of Sexual Violence? What are the rights of victims of criminal acts of sexual violence in Law Number 12 of 2022 concerning Crimes of Sexual Violence?

## **2. Research Methods**

This research is legal research, using normative (juridical) legal research methods. This legal research uses a statutory approach and a comparative approach. This research was carried out using primary legal materials, namely in the form of statutory regulations and secondary legal materials in the form of law books and legal journals related to the problem under study. This research uses library and internet studies in collecting legal materials. The legal material analysis technique used is syllogism using deductive logic.

## **3. Results and Discussion**

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<sup>5</sup>See in the Draft Explanation of General Provisions of the Draft Law on the Elimination of Crimes of Sexual Violence, <https://www.dpr.go.id/doksileg/besar2/RJ2-20170201-043128-3029.pdf>, accessed on June 8 2022 at 14.44 WIB

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### **3.1. Law Enforcement Process for Criminal Acts of Sexual Violence in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence**

The enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence is a form of legal protection for citizens by providing legal instruments to enable strong law enforcement against criminal acts of sexual violence in Indonesia.

The crime of sexual violence is a crime that concerns human dignity and is a form of discrimination that must be eradicated and eliminated. During this time, many women and children experience sexual violence, so that sexual violence also leads to gender-based violence. Acts of sexual violence have the potential to occur in patriarchal societal structures which often degrade the dignity of women. Acts of sexual violence can occur in the family, workplace, higher education institutions and elementary schools, as well as in other public places. Sexual violence has a tremendous impact on victims, including psychological, health, economic and social suffering.

Prior to the enactment of Law Number 12 of 2022, there were several legal regulations governing acts of sexual violence, but their form and scope were still limited. So, with these legal regulations, it is still very difficult to take action against perpetrators of sexual violence crimes because of various obstacles. These legal regulations have not been able to respond to the development of criminal acts of sexual violence in society. Apart from that, community involvement is considered important to prevent sexual violence, and prevent actions that blame and isolate victims and their families and support conditions that are free from sexual violence. Therefore, there is a need for a Sexual Violence Crime Law that specifically fills the gaps in the existing legal system.

Law Number 12 of 2022 is part of a specially regulated criminal law (*lex specialis*) outside the Criminal Code (KUHP) which does not yet specifically regulate sexual violence. The specificity of Law Number 12 of 2022 can be seen in the formulation related to the formulation of types of criminal acts of sexual violence. According to Article 4 Paragraph (1) of Law Number 12 of 2022, it is stated that criminal acts of sexual violence consist of:<sup>6</sup>

#### **a) Non-physical sexual harassment**

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<sup>6</sup>See Article 4 Paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence  
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- b) Physical sexual harassment
- c) Coercion of contraception
- d) Forced Sterilization
- e) Forced Marriage
- f) Sexual Torture
- g) Sexual exploitation
- h) Sexual slavery
- i) Electronic-based sexual violence

The criminal offense of Sexual Violence that has been legalized is formulated based on the experience of dealing with different victims of Sexual Violence, namely children, victims from disability groups, victims of sexual violence in the workplace, victims in educational institutions and in cultural contexts. These regulated forms often cannot be submitted to legal action even though the impact is very strong on the victim, so they need separate regulation in the form of a special law. Another specificity can be seen in the emphasis on victims' rights which can be immediately accessed by victims when victims of sexual violence are known by service providers and the fulfillment of victims' rights is placed as a state obligation. These rights are framed and integrated into a multidisciplinary, coordinated and sustainable process of Handling, Protection and Recovery for Victims. Fulfillment of this right is carried out at every stage of criminal justice, including the need for coordination in providing recovery for victims.<sup>7</sup>

Law enforcement against criminal acts of sexual violence in Law Number 12 of 2022 contains several reforms related to the procedural law for handling criminal acts of sexual violence. The aim of this different procedural law is to adapt it to the interests of victims of sexual violence,

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<sup>7</sup> <https://www.dpr.go.id/doksileg/besar2/RJ2-20170201-043128-3029.pdf>, accessed on June 8 2022 at 14.44 WIB

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in the sense that the procedural law is made more victim-oriented. Specific provisions related to procedural law for criminal sexual violence are as follows:<sup>8</sup>

- 1) Investigators, public prosecutors and judges who handle cases of criminal sexual violence must meet the integrity and competency requirements regarding handling cases from a human rights perspective and are victim-oriented and have experience in handling criminal cases of sexual violence based on decisions of authorized officials (Article 21 Paragraph (1) and paragraph (2) Law Number 12 of 2022).
- 2) Investigators, public prosecutors and judges who handle cases of criminal acts of sexual violence in conducting examinations of witnesses, victims and suspects must uphold human dignity and dignity, do not carry out intimidation, do not carry out justifications or do not carry out victimization (the process of someone becoming a victim) (Article 22 Law Number 12 of 2022)
- 3) Criminal cases of sexual violence cannot be resolved outside of court, except for child perpetrators (Article 23 of Law Number 12 of 2022)
- 4) Legal evidence in proving a criminal act of sexual violence consists of evidence as stated in the criminal procedural law, electronic evidence, and evidence used to commit a criminal act and/or enda related to the criminal act of sexual violence (Article 24 of Law Number 12 of 2022)
- 5) The testimony of witnesses and/or victims with disabilities has the same legal force as the testimony of witnesses and/or victims who do not have disabilities, so that law enforcement officials must provide appropriate accommodation for people with disabilities in the trial process (Article 25 Paragraph (4) of Law Number 12 of 2022 )
- 6) The testimony of witnesses and/or victims is sufficient to prove that the defendant is guilty, accompanied by only 1 valid piece of evidence and the judge is confident that a crime of sexual violence has indeed occurred (Article 25 Paragraph (1) of Law Number 12 of 2022)

The Sexual Violence Crime Law confirms regulations regarding the obligation to provide education and training for law enforcement officers, assistants and officers of service providing

<sup>8</sup> <https://gajimu.com/kerja-yanglayak/hak-pekerja-perempuan/pelecehan-dan-kekerasan/faq-undang-undang-tindak-pidana-kekerasan-sexual#:~:text=UU%20TPKS%20merupakan%20usaha%20update,Handle%2C%20protect%2C%20and%20recover%20victims>, accessed on June 8 2022 at 16.16 WIB

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institutions in an integrated manner; provisions regarding community participation in eliminating sexual violence; and international cooperation in eliminating sexual violence. For effective enforcement of the provisions it regulates, the Law on the Elimination of Sexual Violence emphasizes the need for monitoring efforts to eliminate Sexual Violence, where this monitoring is carried out by the National Commission on Violence Against Women.<sup>9</sup>

### **3.2. The Rights of Victims of Crimes of Sexual Violence in Law Number 12 of 2022 concerning Crimes of Sexual Violence**

Laws are made in order to protect people's rights from violations committed by other people or other parties. Law enforcement is needed in order to protect the law of society. Regarding cases of criminal acts of sexual violence, law enforcement is used to protect the rights of victims of criminal acts of sexual violence, the majority of whom are women and children. The rights of victims of criminal acts of sexual violence are one aspect that needs attention and is one of the breakthroughs in the regulations in Law Number 12 of 2022 concerning Crimes of Sexual Violence.

In relation to the rights that should be obtained by victims of criminal acts of sexual violence, they are regulated in Chapter V of Law Number 12 of 2022 regarding the rights of victims, the rights of victims' families and the rights of witnesses. Furthermore, the rights of victims of criminal acts of sexual violence are regulated in Article 66 paragraph (1) and paragraph (2), which states that:

- 1) Victims have the right to treatment, protection and recovery since the crime of sexual violence occurred.<sup>10</sup>
- 2) Victims with disabilities have the right to obtain appropriate accessibility and accommodation to fulfill their rights in accordance with the provisions of statutory regulations, unless otherwise provided in this law.<sup>11</sup>

Furthermore, in obtaining their rights, the scope of guaranteeing the rights of victims of sexual crime includes rights in the treatment stage, rights in the protection stage and recovery stage.

<sup>9</sup> <https://www.dpr.go.id/doksileg/besar2/RJ2-20170201-043128-3029.pdf>, accessed on June 8 2022 at 14.44 WIB

<sup>10</sup> See Article 66 Paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

<sup>11</sup> See Article 66 Paragraph (2) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence



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Fulfilling Victims' Rights is a state obligation and is carried out in accordance with the conditions and needs of Victims.<sup>12</sup>

Furthermore, related to the rights of victims of criminal acts of sexual violence at the handling stage, it is regulated in detail in Article 68 of Law Number 12 of 2022 which states that the rights of victims of criminal acts of sexual violence at the handling stage include:<sup>13</sup>

- 1) The right to information regarding the entire process and results of treatment, protection and recovery
- 2) The right to obtain documents resulting from handling
- 3) Right to legal services
- 4) The right to psychological reinforcement
- 5) The right to health services includes examinations, procedures and medical treatment
- 6) The right to services and facilities according to the victim's specific needs
- 7) The right to removal of sexually charged content in cases of electronic media sexual violence

The rights of victims of criminal acts of sexual violence in the protection stage are then regulated in Article 69 of Law Number 12 of 2022 which includes:<sup>14</sup>

- 1) Provision of information on rights and protection facilities
- 2) Providing access to information on protection providers
- 3) Protection from threats of violence from perpetrators and other parties as well as recurrence of violence

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<sup>12</sup>See Article 67 Paragraphs (1) and (2) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

<sup>13</sup>See Article 68 of Law Number 12 of 2022 concerning Crimes of Sexual Violence

<sup>14</sup>See Article 69 of Law Number 12 of 2022 concerning Crimes of Sexual Violence

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- 4) Protection of identity confidentiality
- 5) Protection from attitudes and behavior of law enforcement officers that demean victims
- 6) Protection from job loss, job transfer, education and political access
- 7) Protection of victims and/or reporters from criminal charges or civil lawsuits for reported criminal acts of sexual violence.

Protection of the rights of victims of criminal acts of sexual violence in the recovery stage is regulated in Article 70 Paragraph (1) of Law Number 12 of 2022 concerning Crimes of Sexual Violence, which includes:<sup>15</sup>

- 1) Medical rehabilitation
- 2) Mental and social rehabilitation
- 3) Social empowerment
- 4) Restitution and/or compensation
- 5) Social reintegration

The guaranteed protection of the rights of victims of crimes of sexual violence in the recovery phase also covers the recovery phase before and during the trial as regulated in Article 70 Paragraph (2) as well as the recovery phase after the trial as regulated in Article 70 Paragraph (3) of Law Number 12 of 2022. The right to recovery before and during the trial period includes:<sup>16</sup>

- 1) Provision of health services for physical recovery
- 2) Psychological strengthening
- 3) Providing information about victims' rights and the judicial process

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<sup>15</sup>See Article 70 Paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

<sup>16</sup>See Article 70 Paragraph (2) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

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- 4) Providing information about recovery services for victims
- 5) Legal assistance
- 6) Providing accessibility and appropriate accommodation for victims with disabilities
- 7) Providing assistance with transportation, food, temporary living expenses and adequate and safe temporary residence
- 8) Provision of spiritual and spiritual guidance
- 9) Providing educational facilities for victims
- 10) Providing population documents and other documents required by victims
- 11) The right to information if the prisoner has finished serving his sentence
- 12) The right to removal of sexually charged content in cases of electronic media sexual violence

Meanwhile, the victim's right to recovery after the judicial process includes:<sup>17</sup>

- 1) Regular and ongoing monitoring, examination and services for physical and psychological health of victims
- 2) Strengthening community support for victim recovery
- 3) Assistance in the use of restitution and/or compensation
- 4) Providing population documents and other documents required by victims
- 5) Provision of social security services in the form of health insurance and other social assistance according to needs based on an integrated team assessment.

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<sup>17</sup>See Article 70 Paragraph (3) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence Law Enforcement Against Criminal Acts of Sexual Violence Post Law ...  
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6) Economic empowerment

7) Provision of other needs based on the identification results of UPTD PPPA and/or Community Based Provider Institutions.

Law Number 12 of 2022 was passed as a legal umbrella that can protect the rights of victims of criminal acts of sexual violence so that they receive treatment, protection and recovery both during the judicial process and after the judicial process. In order for it to run effectively, the role of the community is needed in monitoring and reporting any criminal acts of sexual violence.

#### **4. Conclusion**

Based on the description of the results of the previous discussion, the author draws a conclusion that:

a. The crime of sexual violence is a crime that concerns human dignity and is a form of discrimination that must be eradicated and eliminated. Law enforcement against criminal acts of sexual violence in Law Number 12 of 2022 contains several updates related to the procedural law for handling criminal acts of sexual violence. The aim of this different procedural law is to adapt it to the interests of victims of sexual violence, in the sense that the procedural law is made more victim-oriented.

b. Law Number 12 of 2022 was passed as a legal umbrella that can protect the rights of victims of criminal acts of sexual violence so that they receive treatment, protection and recovery both during the judicial process and after the judicial process. In order for it to be effective, the role of the community is needed in monitoring and reporting any criminal acts of sexual violence.

1. For the Government and law enforcement officials, in handling cases of criminal acts of sexual violence, they must carry out good coordination and harmonization and need to improve human resources in the field of criminal acts of sexual violence.

2. The community is expected to take active participation in preventing sexual violence in the surrounding environment.

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**Regulation:**

Law Number 12 of 2022 concerning Crimes of Sexual Violence