

Comparison of Sexual Violence Crimes Based on Law Number 12 of 2022 by Law Number 1 Of 2023"

Frengki Melkianus Radja¹⁾ & Andri Winjaya Laksana²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: frengkimelkianusradja.std@unissula.ac.id

²⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail: andri@unissula.ac.id

Abstract. *Sexual violence crimes constitute a violation of human rights that require comprehensive legal protection. In Indonesia, the regulation regarding sexual violence has undergone significant development with the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS) and the promulgation of Law Number 1 of 2023 on the Criminal Code (KUHP 2023). These two laws serve as the legal basis for addressing sexual violence, each having different approaches, scopes, and substantive provisions. This study aims to analyze and compare the regulation of sexual violence crimes between the TPKS Law and the 2023 Criminal Code, focusing on the elements of the offense, recognized forms of sexual violence, and towards approaches to victims. The research employs a normative juridical method with a statutory and conceptual approach. Data were collected through literature review and analyzed qualitatively. The results indicate that the TPKS Law functions as a *lex specialis*, providing broader protection and being more victim-centered, covering a wider variety of sexual violence forms. Meanwhile, the 2023 Criminal Code regulates sexual violence within a more limited scope but incorporates several provisions from the TPKS Law as part of national criminal law harmonization. Although there are some overlapping norms, both laws can complement each other if implemented properly. This study recommends the importance of synchronization and harmonization between the TPKS Law and the 2023 Criminal Code to optimize legal protection for sexual violence victims within Indonesia's criminal justice system.*

Keywords: *Criminal; Legal; Protection; Sexual; Violence.*

1. Introduction

Sexual violence is a legal issue that can affect anyone, including women and children. The number of sexual violence crimes remains high throughout Indonesia, with various *modus operandi* evolving.

However, with the ratification and signing of Law Number 1 of 2023 dated January 2, 2023 concerning the Criminal Code, which marks the end of the era of the colonial legacy of the Criminal Code, it certainly presents new challenges that must be faced, especially in law enforcement against cases of sexual violence.

Master of Law, UNISSULA

Although the new Criminal Code officially came into effect on January 2, 2026 (a 3-year transition period since its ratification), there will certainly be major challenges in its implementation: how can the TPKS Law be in harmony with the Criminal Code (KUHP)?

Synchronization and harmonization are very important, because if these regulations are not aligned, the implementation of the TPKS Law in the field can be difficult, become confusing in its application, which in the end can harm the interests of victims and complicate the law enforcement process.

Synchronization can be done in two directions, namely vertical and horizontal synchronization.¹ Vertical synchronization is the synchronization of laws and regulations with other laws and regulations in a different hierarchy. In vertical synchronization efforts, the resolution effort can use the legal principle of *Lex Superiori derogate Lex Inferiori*. Vertical synchronization is carried out by examining whether the laws and regulations applicable in a particular field do not contradict each other. Meanwhile, horizontal synchronization can use the principles of *Lex Posteriori derogate Lex Priori* and *Lex Specialis derogate Lex Generalis*. Horizontal synchronization is the synchronization of laws and regulations with other laws and regulations in the same hierarchy. Horizontal synchronization is carried out by examining various laws and regulations of equal rank and regulating the same or related fields. Horizontal synchronization must also be carried out chronologically, namely according to the chronological order of the enactment of the laws and regulations in question. Horizontal synchronization aims to reveal the reality to what extent certain legislation is horizontally harmonious, that is, there is harmony between equal legislation regarding the same field.

One of the differences that emerges between the TPKS Law and the Criminal Code is the definition of sexual violence. The TPKS Law broadens the definition of sexual violence (e.g., non-physical sexual harassment, sexual exploitation, forced contraception), while the Criminal Code, in articles 414-419, also regulates sexual crimes, but with different formulations (e.g., "molestation" in the Criminal Code and "sexual violence" in the TPKS Law).²

In addition, a number of other differences need to be harmonized, namely the criminal system, protection of victims and witnesses, provisions on consent, special crimes (e.g., sexual harassment in the public sphere), restorative justice, provisions on corporations, special provisions for vulnerable groups, and so on.

These differences have the potential to create ambiguity in the application of the law, especially in the context of regulations regarding proof and the imposition of heavier sanctions on perpetrators.

¹Sayuna, I., Harmonization and Synchronization of the Law on Power of Attorney to Encumber Mortgage Rights (SKMHT) Reviewed from the Authenticity of the Deed According to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, 2016;

²Evi Nurvidya Arifin & Indriyanto Seno Adji, "Sexual Criminal Law in Indonesia: Analysis of the TPKS Law and the Criminal Code", Jakarta, Kencana, 2023, p. 50;

In relation to this perspective, synchronization between the two regulations is not only a necessity, but also a strategic step to address the challenges of law enforcement against sexual violence crimes more effectively and humanely.

Therefore, this study will examine how these two regulations can be harmonized to ensure the law operates effectively and favors victims. Furthermore, this study will identify obstacles that arise in the law's implementation and propose solutions to ensure the TPKS Law's optimal implementation.

2. Research Methods

A research method is a method of working to understand the objects targeted by the relevant science. A method is a guideline for how a scientist studies and understands the environments they are studying.³ Meanwhile, research is a method based on systematic methods and certain thoughts that aim to solve a scientific problem. The approach used in this research is normative juridical. Normative juridical is an approach that focuses on the study of legal norms written in legislation and legal doctrine. This approach is used to analyze law based on primary legal materials, such as statutes, government regulations, and other related regulations, as well as secondary legal materials such as legal journals, books, relevant previous research, and the opinions of legal experts. The research specifications used a descriptive analytical approach, which systematically presents and analyzes data with the aim of providing the most accurate data possible about people, conditions, and other phenomena. Descriptive means that the author aims to describe and provide data as accurately, systematically, and comprehensively as possible. Analytical means grouping, combining, and comparing aspects related to the problem, both theoretically and practically.

3. Results and Discussion

Sexual violence is a form of human rights violation that has significant impacts on victims, both physically, psychologically, and socially. In Indonesian law, regulations regarding sexual violence have undergone significant developments, particularly with the enactment of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) and the subsequent enactment of Law No. 1 of 2023 concerning the Criminal Code (KUHP 2023).

This research focuses on these two legal instruments which are a representation of the development and dynamics of national criminal law in responding to cases of sexual violence which are increasingly complex and increasing over time, particularly in the context of protecting victims of sexual violence and punishing perpetrators.

The TPKS Law was created as a correction to the limitations of the old criminal code (the colonial legacy of the Criminal Code), which was deemed incapable of comprehensively addressing sexual crimes, particularly in terms of victim protection. This law is the product of a long struggle by civil society, academics, and victims of sexual violence, who demanded specific regulations that support victims.

³Soerjono Soekanto, Introduction to Legal Research, Jakarta, UI Press, 1986, p. 14.

Master of Law, UNISSULA

The TPKS Law also introduces the principle of non-revictimization, which means that victims should not be blamed, demeaned, or forced to repeat traumatic experiences in the legal process.

In terms of criminal penalties, the TPKS Law provides for the imposition of additional penalties, such as perpetrator rehabilitation, disclosure of the perpetrator's identity, victim restitution, and fines. This reflects the idea that criminal penalties for sexual violence concern not only the perpetrator but also recovery and justice for the victim.

"The enactment of the TPKS Law marks an important milestone in national criminal law reform, prioritizing victim protection and recognizing the diversity of forms of sexual violence."⁴

With a more progressive and human rights-based approach, the TPKS Law is expected to be able to fill the legal gap and strengthen protection for victims of sexual violence who have not received proper justice in the conventional criminal justice system.

However, as is commonly known, on January 2, 2023, the Government has ratified and signed Law Number 1 of 2023 concerning the Criminal Code, which will officially come into effect on January 2, 2026 (a 3-year transition period from ratification).

Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023) is a codification of national criminal law, replacing the Dutch colonial legacy of the *Wetboek van Strafrecht*, which had been in effect for over a century. The process of drafting this KUHP took decades and involved various stakeholders, including academics, practitioners, and civil society.

One important aspect of the 2023 Criminal Code is its effort to reorganize and harmonize various criminal acts, including sexual violence, into a single, systematic national legal instrument characterized by Pancasila values and local wisdom.

The 2023 Criminal Code begins to accommodate various types of sexual violence, although its terminology is not yet comprehensive and does not explicitly use the term "sexual violence" as in the TPKS Law.

However, the scope of sexual violence crimes in the 2023 Criminal Code is still limited and does not yet include non-physical forms of sexual violence, technology-based violence, or forced contraception and marriage as regulated in detail in the TPKS Law.

The 2023 Criminal Code maintains the classic criminal penalty structure (main punishment and additional punishment), and does not explicitly provide space for victim recovery mechanisms such as rehabilitation, restitution, or active victim participation in the legal process as stipulated in the TPKS Law.

⁴Luh Putu S. Adnyani, Victim-Based Approach in the TPKS Law, *Journal of Law and Human Rights*, Vol. 13, No. 2, 2022, p. 140.

Master of Law, UNISSULA

"The 2023 Criminal Code has indeed undergone modernization, but in terms of sexual violence, its approach remains more conservative and oriented towards protecting public morals rather than the victim's perspective."⁵

In addition, although the 2023 Criminal Code has an important role as general criminal law (*lex generalis*), its existence creates the potential for overlap with the TPKS Law as *lex specialis*, especially when law enforcement officers do not explicitly refer to the hierarchy of applicable legal norms.

Thus, although the 2023 Criminal Code represents a significant milestone in national criminal law reform, in terms of protecting victims of sexual violence and recognizing the complexity of sexual violence, the TPKS Law still provides more progressive and comprehensive protection.

3.1. Comparison of the TPKS Law with the Criminal Code regarding Sexual Violence Crimes.

This research was conducted through a normative juridical approach, namely an approach that examines applicable laws and regulations as positive legal norms that govern society. Through this approach, an analysis of the text of the law is carried out systematically, logically, and coherently, by paying attention to the principles of criminal law, human rights, and victim protection using comparative law techniques. The aim is to identify similarities and differences between the TPKS Law as a special regulation (*lex specialis*) and the 2023 Criminal Code as a general regulation (*lex generalis*) in terms of regulating criminal acts of sexual violence.

This comparison covers the following aspects:

1) Scope and types of sexual violence crimes;

The TPKS Law has established 12 (twelve) types of sexual violence crimes, namely:

- a. Non-physical sexual harassment
- b. Physical sexual abuse
- c. Forced contraception
- d. Forced sterilization
- e. Forced marriage
- f. Sexual torture
- g. Sexual exploitation
- h. Sexual slavery
- i. Forced abortion

⁵R. Wiryono, *Criminal Law Reform: Analysis of the New Criminal Code*, Jakarta, Rajawali Pers, 2023, p. 87.

Master of Law, UNISSULA

- j. Rape
- k. Indecent acts
- l. Other crimes of sexual violence regulated by law

Meanwhile, in the 2023 Criminal Code, the crime of sexual violence is regulated in a limited manner with a more conservative approach, namely:

- 1) Articles 415 to 422: concerning indecent acts and sexual violence against children;
- 2) Article 464: Concerning forced abortion;
- 3) Article 473: regarding rape;

This shows that the TPKS Law has a much broader and more contextual scope related to the scope and types of sexual violence crimes, while the 2023 Criminal Code still maintains a conventional approach to sexual crimes.

- 2) Legal terminology and concepts;

The TPKS Law uses modern, human rights-based terminology, such as "victim," "assistance," "recovery," and "restorative." The concept of sexual violence in the TPKS Law is not limited to physical penetration alone, but encompasses forms of sexual control, domination, and coercion that have psychological, social, and economic impacts on victims.

In contrast, the 2023 Criminal Code still uses classical terms such as "indecent acts" or "adultery," which tend to be moralistic and do not accommodate the dynamics of power relations and the vulnerability of victims, especially women and children.

"The 2023 Criminal Code continues to view sexual violence as a moral violation, not as a violation of bodily integrity and human dignity."⁶

- 3) Legal Approach and Protection for Victims;

Victim protection is the most fundamental difference between the two laws. The TPKS Law provides comprehensive protection to victims, including:

- a. Legal, psychological and social assistance;
- b. Medical and psychosocial rehabilitation;
- c. The right to confidentiality of identity;
- d. Restitution and compensation;
- e. Guarantee of freedom from re-victimization.

⁶R. Wiryono, Criminal Law Reform: Analysis of the New Criminal Code, Jakarta, Rajawali Pers, 2023, p. 93

Meanwhile, in the 2023 Criminal Code, victim protection is not specifically regulated and tends to be embedded within the general criminal justice system. There is no specific mechanism for victim restitution or rehabilitation. The 2023 Criminal Code still focuses on punishing perpetrators, without specific provisions for victim rehabilitation.

4) Evidence and Proof Procedures

The TPKS Law introduces a new paradigm in proving sexual violence crimes. Its primary focus is a victim-centered approach and recognition of victims' vulnerability. The TPKS Law expands the types of evidence that can be used in legal proceedings, including psychological and electronic evidence.

As stated in Article 24 of Law Number 12 of 2022 which states:

(1) Valid evidence in proving the crime of sexual violence consists of:

- a. Evidence as referred to in criminal procedure law;
- b. Other evidence in the form of electronic information and/or electronic documents as regulated in statutory provisions; and
- c. Evidence used to commit a crime or as a result of a crime of sexual violence and/or objects or goods related to the crime.

(2) Including evidence in the form of witness statements, namely the results of examinations of witnesses and/or victims at the investigation stage through electronic recording;

(3) Included in the written evidence are:

- a. Certificate from a clinical psychologist and/or psychiatrist/mental health specialist;
- b. Medical records;
- c. Forensic examination results; and/or
- d. Results of bank account check.

This approach greatly simplifies the proof, especially in cases such as verbal/non-physical sexual harassment which are difficult to prove using traditional methods.⁷

Meanwhile, the 2023 Criminal Code still relies on conventional evidence in the evidentiary system in the Criminal Procedure Code (KUHP), which in Article 184 of the Criminal Procedure Code stipulates 5 (five) pieces of evidence:

- a. Witness testimony;
- b. Expert testimony;

⁷Luh Putu R. Sari and Putu Y. Ariani, The Role of Psychologists in Proving Sexual Violence Cases, Journal of Law & Development, Vol. 53, No. 2, 2023

Master of Law, UNISSULA

- c. Letter;
- d. Instruction;
- e. Defendant's statement.

The 2023 Criminal Code does not explicitly accommodate electronic and psychological evidence in the context of sexual violence. This has drawn significant criticism from academics and practitioners.

According to Dr. Erni W. Haryani: "The 2023 Criminal Code remains neutral on essential evidence in sexual violence cases. This complicates the process of establishing evidence, particularly in the digital context and regarding the victim's mental state."⁸

Meanwhile, regarding the proof procedure, the author has made it in the form of a comparison table as follows:

NO	ASPECT	Law No. 22 of 2022	Law No. 1 of 2023
1	2	3	4
1.	Proof approach	Victim-based	Actor-based / neutral
2.	Types of evidence	Traditional + non-conventional (psychological, electronic)	Only conventional evidence
3.	Psychological and medical records	Accepted as independent evidence	Needs to be combined with other evidence
4.	Electronic evidence	Explicitly acknowledged	Not explicitly regulated
5.	Protection of victims during the trial	Strictly regulated (Articles 26–29 of the TPKS Law)	Not specifically regulated

5) Additional Penalties and Sanctions

The TPKS Law opens up space for additional criminal penalties and actions, such as:

- a) Announcement of the perpetrator's identity;
- b) Granting of restitution;
- c) Prohibition on approaching the victim;
- d) Rehabilitation for perpetrators.

Meanwhile, the 2023 Criminal Code is still limited to imprisonment and fines, as well as the revocation of certain rights. This demonstrates that the TPKS Law is more progressive and restorative, while the 2023 Criminal Code is more repressive and conventional.

6) Principles and philosophy of law

⁸Journal of Law Repertorium, 2023

Master of Law, UNISSULA

The TPKS Law was born from a philosophy of victim protection and an awareness of the unequal power relations that enable sexual violence. This law positions victims as legal subjects who must be protected, not merely as evidence.

On the other hand, the 2023 Criminal Code, although it carries the spirit of national codification, still maintains the classic philosophy of criminal law which emphasizes punishment of perpetrators without a restorative approach to victims.

"The TPKS Law is a manifestation of a new paradigm in criminal law that is gender-just and victim-oriented."⁹

7) Normative Implications

In practice, the potential for overlap between the TPKS Law and the 2023 Criminal Code could create legal uncertainty. Therefore, the principle of *lex specialis derogat legi generali* must be prioritized, meaning the TPKS Law applies first in cases of sexual violence because it regulates them more specifically and comprehensively.

8) Comparison Table of Sexual Violence Crimes between the TPKS Law and the 2023 Criminal Code

NO	ASPECT	TPKS Law (2022)	Criminal Code 2023
1.	Types of Crimes	Mixed (general and complaints), depending on the type of sexual violence: Articles 5-7: Non-physical, physical sexual harassment; Articles 8-9: Forced contraception and sterilization; Article 10: Forced marriage; Article 11: Sexual torture; etc.	Majority of complaint offenses: Articles 415-422: indecent acts and sexual violence against children; Article 464: Forced abortion; Article 473: rape
2.	Scope of the Offense	Extent (12 types of sexual violence)	Limited (rape, indecency, child exploitation)
3.	Legal Approach	Victim-based, human rights (Articles 67-70)	Actor-based, Conventional, moralistic
4.	Victim Recovery	Complete (Article 70): medical, psychological, legal and social reintegration services	General and limited (Not explicitly regulated)
5.	Evidence	Articles 24-28: Including digital evidence, psychological evidence, and psychiatric examinations	Conventional evidence (witnesses, post-mortem, confessions)
6.	Criminalization	Main + additional (rehabilitation, prohibition, identity announcement)	Imprisonment, fines, revocation of rights
7.	Legal Follow-up	Obligations for legal assistance, restitution and rehabilitation	Not regulated in detail

⁹Luh Putu S. Adnyani, op cit, p. 147

8.	Philosophy	Progressive, restorative	feminist, Classic, retributive
9.	Legal nature	<i>Lex specialist</i>	<i>Lex generalis</i>

3.2. Weaknesses between the TPKS Law and the Criminal Code in judicial practice

Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) is a significant milestone in providing legal protection, particularly for victims of sexual violence. However, the introduction of the Criminal Code (KUHP), specifically Law No. 1 of 2023, which is claimed to be a progressive codification of national law, has sparked a number of debates in judicial practice.

The author sees several weaknesses in the two laws in terms of overlapping norms, principles of legality and implementation of procedural law that favors victims, so that it can have serious implications for the effectiveness of law enforcement, victim protection and substantive justice.

1) Dualism of Substantive Law and Potential Overlap.

One of the main weaknesses in judicial practice is the overlapping norms between the TPKS Law and the 2023 Criminal Code. Although Article 4 of the TPKS Law expressly states that the provisions in the TPKS Law apply as *lex specialis* law to the provisions in the Criminal Code, in reality there is still disharmony that causes confusion for law enforcement officers, or at least often law enforcement officers refer more to the Criminal Code because it is considered more established and well-known.

For example, the definition of "sexual violence" in the TPKS Law is much broader than that in the 2023 Criminal Code. For example, non-physical sexual violence such as verbal harassment or actions that attack the sexual dignity of the victim have been accommodated in the TPKS Law, but are not expressly regulated in the 2023 Criminal Code, which still maintains a conservative approach based on traditional morality and only contains certain types of sexual violence in a limited manner.

According to Luh Putu Suryani, in practice, "when law enforcement officers are faced with acts of sexual violence, they are often confused about whether to use the provisions of the Criminal Code or the TPKS Law, which has the potential to weaken effective law enforcement efforts."¹⁰ This was also highlighted in the 2023 National Commission on Violence Against Women report, which stated that of the 1,200 reports of sexual violence, the majority stagnated at the investigation stage due to inconsistent interpretations among authorities.¹¹

¹⁰Luh Putu Suryani, Implementation of the TPKS Law in Judicial Practice, Journal of Law & Development, Vol. 53, No. 1, 2023, p. 75;

¹¹National Commission on Violence Against Women, Annual Report on Violence Against Women 2023, Jakarta, National Commission on Violence Against Women, 2023, p. 32;

"Overlapping regulations without technical clarification in law enforcement practices will complicate proof and could lead to legal uncertainty."¹²

2) Limitations of the 2023 Criminal Code in Recognizing Non-Physical Forms of Sexual Violence

The 2023 Criminal Code still fails to address emerging forms of contemporary sexual violence, such as cyber-based violence, online sexual exploitation, or power-based sexual violence. Unlike the TPKS Law, which explicitly includes non-physical sexual violence, including sexual exploitation, forced contraception, and forced abortion (Article 4, letter c, of the TPKS Law), the 2023 Criminal Code does not explicitly include similar provisions.

In her study, Diah Kusumaningrum stated that "the new Criminal Code is still very normative and too focused on regulating morality, so it does not fully address the more complex dynamics of modern sexual violence, especially that which occurs in the digital space."¹³ This demonstrates the disconnect between national criminal law reform and the social reality of victims of sexual violence.

3) The Lack of a Victim-Based Approach in the 2023 Criminal Code

The TPKS Law emphasizes a victim-centered approach, where the legal process focuses not only on punishing the perpetrator but also on protecting, restoring, and restitution for the victim. In contrast, the 2023 Criminal Code still predominantly relies on a retributive paradigm that fails to adequately address victim recovery.

This opinion is reinforced by Asfinawati, Director of the APIK Legal Aid Institute, who stated that "The 2023 Criminal Code does not yet prioritize victims as the primary subject in the criminal justice process. Yet, in cases of sexual violence, a victim-centered legal approach is crucial for successful evidence and substantive justice."¹⁴.

4) The Absence of a Specific Case Handling Mechanism in the 2023 Criminal Code

The TPKS Law regulates quite specific and progressive procedures for case handling, including mandating the establishment of integrated service units, mandatory victim assistance, victim needs assessments, special examination procedures for women and children, and a prohibition on penal mediation in sexual violence cases (Articles 24 and 25 of the TPKS Law). However, the 2023 Criminal Code does not explicitly regulate these mechanisms, resulting in their neglect in practice. This opens up opportunities for law enforcement officials to employ conventional approaches that have the potential to harm victims, including encouraging the

¹²Lestari, Dewi, Potential Normative Conflict between the TPKS Law and the 2023 Criminal Code in Sexual Violence Crimes, *Journal of Law and Development*, Vol. 54 No. 3, 2023, p. 421;

¹³Diah Kusumaningrum, Sexual Violence in the New Criminal Code: A Gender Critique, *Indonesian Journal of Criminology*, Vol. 19, No. 2, 2023, p. 144;

¹⁴Asfinawati, The Role of Legal Assistance in Handling Sexual Violence Cases, *Jurnal Perempuan*, No. 114, 2023, p. 58;

Master of Law, UNISSULA

resolution of sexual violence through mediation or restorative justice that are inappropriate to the context.¹⁵

For example, in several decisions, the panel of judges failed to consider the victim's trauma or even assumed that the victim's behavior "invited" the sexual assault. Furthermore, there have been several cases where law enforcement officials have chosen to resolve sexual violence through a family approach, which clearly contradicts the spirit of victim protection in the TPKS Law.

According to the 2023 Annual Report, the National Commission on Violence Against Women stated that "The lack of specialized training and support mechanisms for law enforcement officers has resulted in the progressive norms in the TPKS Law failing to be implemented fairly in court."¹⁶

5) Incoherence of Criminal Sanctions

The differences between the criminal sanctions in the TPKS Law and the 2023 Criminal Code also have the potential to cause problems. For example, the Criminal Code stipulates minimum and maximum penalties that are sometimes lighter than those stipulated in the TPKS Law. This leaves room for perpetrators to receive lighter sentences if prosecutors or judges refer to the Criminal Code.

In fact, the spirit of the TPKS Law is to provide a deterrent effect and prevent sexual violence through severe and additional penalties (such as rehabilitation of perpetrators and restitution of victims).

"The misalignment between the sanctions in the TPKS Law and the Criminal Code will create disparities in sentencing that will be detrimental to victims."¹⁷

6) Lack of Harmonization with Islamic Law and Local Values

In some areas, the 2023 Criminal Code is still not fully aligned with Islamic legal values, particularly regarding the burden of proof and sanction mechanisms. Islamic law recognizes the importance of restorative justice, but with strict regulations and prioritizing the principle of victim protection. For example, in the case of zina bil jabar (rape), classical Islamic jurisprudence even permits proof through strong indications (qarinah) if the testimony of four witnesses is unavailable.¹⁸

However, the 2023 Criminal Code does not provide sufficient space for non-traditional forms of evidence in sexual violence cases. As a result, victims struggle to meet the evidentiary requirements, especially when physical evidence is unavailable due to late reporting or

¹⁵Andi Hamzah, Indonesian Criminal Law (KUHP and its Development), Jakarta, Prenadamedia, 2023, p. 309;

¹⁶National Commission on Violence Against Women, Annual Report 2023: The Reality of Handling Sexual Violence Cases Post-TPKS Law, Jakarta, 2023;

¹⁷Marzuki, Peter Mahmud, The Relevance of the TPKS Law in the National Criminal Justice System, UGM National Law Seminar Paper, 2023;

¹⁸Muhammad Abu Zahrah, Ushul al-Fiqh, Cairo, Dar al-Fikr, 1981, p. 388;

Master of Law, UNISSULA

psychological trauma. This approach has been criticized by Professor Ahsin Sakho Muhammad, who stated that "national criminal law should boldly adopt principles of Islamic justice that are more responsive to victims' needs, rather than being trapped in formal legalism."¹⁹.

Based on the above description, the author assesses that the weaknesses between the TPKS Law and the 2023 Criminal Code in judicial practice are not only normative, but also structural and cultural. The disharmony, dualistic regulations, and lack of a victim-centered approach in the 2023 Criminal Code constitute serious obstacles to achieving substantive justice.

Therefore, it is necessary to update policies or implementing regulations, integrated training for law enforcement officers, and harmonization between these two legal instruments to ensure that the TPKS Law can be implemented optimally as a more progressive and victim-friendly law.

In addition, strengthening victim-based judicial mechanisms and harmonizing criminal sanctions need to be done immediately to prevent disparities in law enforcement regarding sexual violence.

3.3. Strategy Harmonization The Law between the TPKS Law and the Criminal Code in Handling Sexual Violence Cases.

Legal harmonization is an effort to align the legal norms that apply in the legal system so that they do not conflict with each other and create legal certainty.

In the context of handling sexual violence crimes, the need for harmonization between Law Number 12 of 2022 concerning Sexual Violence Crimes (TPKS Law) and the 2023 Criminal Code (KUHP) is crucial considering that both regulate similar substances but from different perspectives.

The disharmony between these two regulations has the potential to hinder law enforcement, violate the principle of victim protection, and obscure the goal of substantive justice in judicial practice.

In relation to this, the author proposes several legal harmonization strategies in handling sexual violence cases against the two laws, namely:

1) Lex Specialis Derogat Legi Generali Approach

The primary strategy for legal harmonization between the TPKS Law and the 2023 Criminal Code is the application of the principle of *lex specialis derogat legi generali*, which states that specific laws override general laws. In this regard, the TPKS Law, as a regulation specifically addressing sexual violence, must serve as the primary reference in resolving cases within the scope of the law's substance.

¹⁹Ahsin Sakho Muhammad, Criminal Law Reform from the Perspective of Maqashid Syariah, Journal of Sharia and Law, Vol. 25, No. 1, 2022, p. 93;

Master of Law, UNISSULA

According to Prof. Dr. Muladi, the application of the *lex specialis* principle is a concrete manifestation of a systemic approach within the national legal system. He stated, "When two regulations coexist with overlapping substance, the more specific law should be enforced, especially when it relates to the protection of vulnerable groups such as victims of sexual violence."²⁰.

However, in practice, not all law enforcement officers consistently understand and internalize this principle. Several cases indicate that officers prefer to use the Criminal Code due to familiarity and customary practice, even though the TPKS Law provides more comprehensive protection for victims.²¹ Therefore, intensive outreach and training are needed for investigators, prosecutors, and judges so that the principle of *lex specialis* is truly implemented in case handling.

2) Integration of the Legal System through Implementing Regulations and Technical Guidelines

The next strategy is the development of implementing regulations and integrated technical guidelines that bridge the provisions of the Criminal Code and the TPKS Law. These implementing regulations could take the form of Government Regulations, Supreme Court Regulations, or Circular Letters from the Attorney General, providing concrete guidance on the application of norms in sexual violence cases. These guidelines should clarify the limits of the application of the Criminal Code and the TPKS Law and strengthen procedures for victim protection and recovery.

A successful example of this integration can be seen in Circular Letter No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law. This Circular Letter provides a framework for judges to consider the vulnerability of victims in decision-making, including in cases of sexual violence. Jurisprudence, such as Surabaya District Court Decision No. 231/Pid.Sus/2023/PN.Sby, demonstrates that judges base their decisions on the principle of victim protection by referring to the TPKS Law, rather than the Criminal Code, because victims experience trauma and economic dependence on the perpetrator. This demonstrates the effectiveness of clear guidelines in influencing judicial practice.²².

3) Substantial Harmonization Through Re-Legislation and Normative Revision

Harmonization can also be achieved through a limited revision of the 2023 Criminal Code to eliminate the substance already more comprehensively regulated by the TPKS Law. Many criminal law experts have proposed that provisions on sexual violence in the Criminal Code, such as articles on rape and indecent acts, be revised or removed to unify the law and avoid confusion.²³.

²⁰Muladi, *Harmonization of Criminal Law in the Era of Modernization*, Jakarta, Genta, 2021, p. 78;

²¹National Commission on Violence Against Women, *Annual Report on Sexual Violence 2023*, Jakarta, National Commission on Violence Against Women, 2023, p. 42;

²²Surabaya District Court Decision No. 231/Pid.Sus/2023/PN.Sby

²³M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code*, Jakarta, Sinar Grafika, 2023, p. 298;

Master of Law, UNISSULA

A study conducted by the University of Indonesia's Institute for Research and Community Service (LPPM) found that "substantial inconsistencies between the Criminal Code and the TPKS Law can hamper effective law enforcement. Therefore, a legislative harmonization plan is needed to eliminate or adjust articles in the Criminal Code that are potentially redundant with the TPKS Law."²⁴.

4) Interdisciplinary Approach and Capacity Building Training for Law Enforcement Officers

Harmonization strategies are implemented not only through regulations but also through an interdisciplinary approach involving forensic psychology, criminology, and gender-based approaches. This can enrich authorities' understanding of the dynamics of sexual violence and the importance of a victim-centric approach.

Asfinawati from LBH APIK stated that "Without continuous training and capacity building of law enforcement officers, regulatory harmonization will not be effective because the main actors in the legal process still carry the old paradigm that is biased against victims."²⁵.

5) Harmonizing Perspectives Through Legal Education and Public Advocacy

Long-term legal harmonization efforts must also be implemented through reforming the legal education curriculum, both at the undergraduate level and in the training of judges and prosecutors. The curriculum must include content on the TPKS Law, restorative justice, a victim-centered approach, and comparative progressive criminal law. Furthermore, public advocacy and the role of civil society must be strengthened to push for the application of laws that favor victims.

As Yohana Yembise, former Minister of Women's Empowerment and Child Protection, emphasized, "Without public education and legal reform, progressive laws like the TPKS Law will stagnate in their implementation in the field because there is no moral and social pressure for officials to change."²⁶.

Harmonization between the TPKS Law and the 2023 Criminal Code is an urgent need to create a criminal justice system that is consistent, progressive, and pro-victims of sexual violence.

This harmonization strategy includes the application of the *lex specialis* principle, the development of integrated implementing regulations, substantive revisions to the Criminal Code, capacity building for law enforcement officials, and legal education reform. According to the author, without these systematic efforts, overlapping norms will continue to be a stumbling block to fair and effective law enforcement for victims of sexual violence.

²⁴LPPM UI, Report on Legislation and Harmonization Study of the Criminal Code & TPKS Law, Depok, University of Indonesia, 2023, p. 112

²⁵Asfinawati, Victim-Based Legal Paradigm in Sexual Violence Crimes, *Jurnal Perempuan*, No. 113, 2023, p. 70

²⁶Yohana Yembise, The Role of the State in Harmonizing Law and Protecting Victims of Sexual Violence, in the National Symposium on Progressive Law, Jakarta, 2022;

4. Conclusion

The TPKS Law promotes a victim-centric paradigm that places victims of sexual violence as the primary subjects in the criminal justice system. This law acknowledges various forms of sexual violence, both physical and non-physical, and guarantees victims' rights to protection, assistance, and recovery. In contrast, the 2023 Criminal Code maintains a retributive and normative approach in defining types of sexual violence, with a limited scope and insufficient attention to victims' protection needs. In substance, there is overlap between the TPKS Law and the 2023 Criminal Code regarding sexual violence offenses. Although the TPKS Law is normatively valid as *lex specialis*, in practice, there is still confusion regarding its application by law enforcement officials. This is due to the existence of provisions in the 2023 Criminal Code that regulate similar crimes but with different definitions, which has the potential to lead to inconsistent court decisions and confuse both victims and perpetrators. In judicial practice, weaknesses in the implementation of the TPKS Law remain, such as a lack of understanding of the new norms among law enforcement officials, limited access to victim assistance, and a tendency to resolve cases through mediation, which is prohibited by the TPKS Law. Furthermore, the 2023 Criminal Code does not accommodate specific procedures for handling victims, such as needs assessment and psychological recovery, which are crucial in cases of sexual violence. To achieve synergy between the TPKS Law and the 2023 Criminal Code, a legal harmonization strategy that is both normative and practical is required.

5. References

Journals:

- Ahsin Sakho Muhammad, 2022, *Reformasi Hukum Pidana dalam Perspektif Maqashid Syariah*, Jurnal Syariah dan Hukum, Vol. 25, No. 1;
- Asfinawati, 2023, *Peran Pendampingan Hukum dalam Penanganan Kasus Kekerasan Seksual*, Jurnal Perempuan, No. 114;
- Diah Kusumaningrum, 2023, *Kekerasan Seksual dalam KUHP Baru: Sebuah Kritik Gender*, Jurnal Kriminologi Indonesia, Vol. 19, No. 2;
- Harkristuti Harkrisnowo, 2003, *Kekerasan Terhadap Perempuan dalam Perspektif Hukum Pidana*, Jurnal Hukum dan Pembangunan, UI, Vol. 33, No. 4,
- Jurnal Hukum Repertorium, 2023;
- Lestari, Dewi, 2023, *Potensi Konflik Norma antara UU TPKS dan KUHP 2023 dalam Tindak Pidana Kekerasan Seksual*, Jurnal Hukum dan Pembangunan, Vol. 54 No. 3;
- Luh Putu S. Adnyani, 2022, *Pendekatan Berbasis Korban dalam UU TPKS*, Jurnal Hukum dan HAM, Vol. 13, No. 2;
- Marzuki, Peter Mahmud, 2023, *Relevansi UU TPKS dalam Sistem Pidana Nasional*, Makalah Seminar Nasional Hukum UGM;

Master of Law, UNISSULA

United Nations, 1993, *Declaration on the Elimination of Violence Against Women*, Article 1;

Yohana Yembise, 2022, *Peran Negara dalam Harmonisasi Hukum dan Perlindungan Korban Kekerasan Seksual*, Simposium Nasional Hukum Progresif, Jakarta;

Books:

Acmad Ali, 2002, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Toko Gunung Agung, Jakarta;

Andi Hamzah, 2008, *Delik-Delik Tertentu dalam KUHP dan Perkembangannya*, Sinar Grafika, Jakarta;

Dilla Z. dan Siti Ruhaini Dzuhayatin, 2020, *Kekerasan Seksual dan Ketimpangan Gender*, Pustaka Pelajar, Yogyakarta;

Dominikus Rato, 2010, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, Laksbang Presindo, Yogyakarta;

Evi Nurvidya Arifin & Indriyanto Seno Adji, 2023, *Hukum Pidana Seksual di Indonesia: Analisis UU TPKS dan KUHP*, Kencana, Jakarta;

Komnas Perempuan, 2017, *Naskah Akademik RUU Penghapusan Kekerasan Seksual*, Jakarta;

Lamintang, 1984, *Dasar-Dasar Hukum Pidana Indonesia*, Sinar Baru, Bandung;

LPPM UI, 2023, *Laporan Kajian Legislasi dan Harmonisasi KUHP & UU TPKS*, Universitas Indonesia, Depok;

Lembaga Perlindungan Saksi dan Korban (LPSK), 2022, *Pedoman Perlindungan Korban Kekerasan Seksual*, LPSK, Jakarta;

M. Yahya Harahap, 2023, *Pembahasan Permasalahan dan Penerapan KUHP*, Sinar Grafika, Jakarta;

Maria Farida Indrati, 2007, *Ilmu Perundang-Undangan: Jenis, Fungsi dan Materi Muatan*, Kanisius, Yogyakarta;

Moeljatno, 2008, *Asas-Asas Hukum Pidana*, PT Rineka Cipta, Jakarta;

Muladi dan Barda Nawawi Arief, 2005, *Teori-Teori dan Kebijakan Pidana*, Alumni, Bandung;

Peter Mahmud Marzuki, 2008, *Pengantar Ilmu Hukum*, Kencana, Jakarta;

Sugiyono, 2017, *Metode Penelitian Kualitatif dan R&D*, Alfabeta, Bandung;

Regulation:

Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence;

Law Number 1 of 2023 concerning the Criminal Code;

Comparison of Sexual Violence Crimes Based on Law Number 12 of 2022 by Law Number 1 Of 2023"

2692

(Frengki Melkianus Radja & Andri Winjaya Laksana)

Master of Law, UNISSULA

Legislation Body, 2021, Academic Draft of the Draft Law of the Republic of Indonesia concerning Criminal Acts of Sexual Violence, House of Representatives of the Republic of Indonesia, Jakarta;

Directorate General of Legislation, 2022, Academic Draft of the Draft Criminal Code, Ministry of Law and Human Rights, Jakarta;

Supreme Court Decision Number 1309 K/Pid.Sus/2014;

Surabaya District Court Decision No. 231/Pid.Sus/2023/PN.Sby;