

## **Criminal Accountability for Perpetrators of Sexual Violence Based on the Values of Justice**

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**Abstract.** *Criminal sanctions against perpetrators of sexual violence are a crucial tool for providing certainty, justice, and protection for victims. However, provisions in the Criminal Code and several previous sectoral laws are often deemed inadequate. The purpose of this study is to examine and analyze criminal liability for perpetrators of sexual violence based on the values of justice, and to examine and analyze obstacles and solutions in law enforcement against perpetrators of sexual violence. This legal research uses empirical legal research methods. Empirical juridical research, namely legal research that uses legal principles and principles to review, observe, and analyze problems in research, in addition to reviewing the implementation of the law in practice. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence provides more comprehensive protection than the Criminal Code because it regulates nine new forms of sexual violence and guarantees victims' rights through assistance, recovery, restitution, and legal protection. This regulation expands the means of evidence, regulates principal and additional penalties, and provides aggravating penalties for perpetrators in dominant positions, thus becoming a more effective and victim-oriented *lex specialis*. However, its enforcement still faces serious obstacles such as unequal power relations, patriarchal culture, stigma, lack of understanding by officials, minimal victim-friendly facilities, and limited psychological and legal services. Furthermore, lengthy bureaucracy, weak inter-agency coordination, budget constraints, disparities in facilities between regions, and victim trauma contribute to slowing down the legal process. Necessary solutions include training officers, developing victim-friendly facilities, strengthening coordination, establishing a secure digital reporting system, state support for restitution, and widespread awareness raising regarding victims' rights and the obligations of law enforcement.*

**Keywords:** *Criminal; Justice; Liability; Sexual; Violence.*

## 1. Introduction

Sexual violence is a very serious form of human rights violation that urgently requires comprehensive attention and handling, especially in Indonesia. In recent years, the increasing number of cases of sexual violence, both physical and non-physical, has become a very worrying issue, ultimately highlighting the urgent need for firmer, more targeted, and more legally grounded law enforcement. This law was introduced as an effort to address the legal gap in addressing various forms of sexual violence that were previously inadequately regulated in the Indonesian legal system. However, even with this new legal framework, significant challenges remain to be addressed in its implementation, including issues of justice for victims and the effectiveness of punishments for perpetrators of sexual violence.<sup>1</sup>

Criminal sanctions against perpetrators of sexual violence are a crucial tool for providing certainty, justice, and protection for victims. However, the provisions in the Criminal Code and several previous sectoral laws are often deemed inadequate.<sup>2</sup>The overly narrow definition of sexual violence, the category of acts that excludes many forms of violence, and the disparity in sentencing indicate that normative regulations do not fully address the complexity of this crime. While the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) represents a step forward, its implementation still requires evaluation to ensure that criminal sanctions truly reflect the severity and impact on victims.<sup>3</sup>

According to the Ministry of Women's Empowerment and Child Protection (PPPA) website, throughout 2023, there were 29,883 cases of sexual violence in Indonesia, of which 26,161 victims were women.<sup>4</sup>Compiled from data reported to the National Commission on Violence Against Women and case data reported and handled by service institutions managed by civil society and local and central governments, the Religious Courts (Badilag), hospitals, courts, the police, and other institutions. Several potential factors contribute to this violence, including power gaps and gender perspectives on inequality between men and women.

Not only against adult women, sexual violence also occurs against minors.<sup>5</sup>Child sexual abuse is any act committed by someone who derives sexual gratification or

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<sup>1</sup>Amrulloh, Dimas Syahrul, and Pudji Astuti. "A Legal Review of Non-Physical Sexual Harassment Crimes in Indonesia: A Case Study of Sexual Harassment Against Starbucks Customers in Jakarta." *Novum: Jurnal Hukum* 9, no. 1 (2022): pp. 31-40.

<sup>2</sup>Suryandi, Dody, Nike Hutabarat, and Hartono Pamungkas. "Implementation of Criminal Sanctions Against Perpetrators of Sexual Violence Against Children." *Darma Agung Journal* 28, no. 1 (2020): pp. 84-91.

<sup>3</sup>Dania, Ira Aini. "Sexual violence against children." *Ibnu Sina: Journal of Medicine and Health - Faculty of Medicine, Islamic University of North Sumatra* 19, no. 1 (2020): pp. 46-52.

<sup>4</sup><https://kekerasan.kemenpppa.go.id/ringkasan> accessed October 20, 2025

<sup>5</sup>Dania, Ira Aini. "Sexual violence against children." *Ibnu Sina: Journal of Medicine and Health - Faculty of Medicine, Islamic University of North Sumatra* 19, no. 1 (2020): pp. 46-52.

pleasure from children. It is not limited to sexual intercourse, but also includes other acts of a sexual nature, such as sexually touching a child's body, engaging in sexual acts in front of children, or intentionally showing children indecent images or films.<sup>6</sup>One form of sexual violence that often occurs is sexual harassment, both physical and non-physical.

The government and the House of Representatives (DPR) have passed Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). Since its enactment, the TPKS Law has received a positive response from various groups, particularly women's rights advocates.<sup>7</sup>This is because the TPKS Law contains specific provisions not previously found in related laws and regulations. This is considered a breakthrough in handling cases of sexual violence, which are very difficult to solve due to a lack of evidence and the reluctance of many witnesses/victims to report their cases to the authorities. Furthermore, laws and regulations related to sexual violence are also considered suboptimal in providing prevention, protection, access to justice, and recovery, as well as failing to meet the rights of victims of sexual violence, and are not comprehensive in regulating procedural law.

Prior to the enactment of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence,<sup>8</sup>This crime is regulated in the Criminal Code (KUHP) in Article 289 which reads "Anyone who by violence or threat of violence forces someone or allows someone to commit an indecent act on him, is punished for damaging decency with a maximum prison sentence of 9 (nine) years." Then in Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, what is meant by criminal acts of sexual violence are all acts that fulfill the elements of a criminal act as regulated in this Law and other acts of sexual violence as regulated in the Law as long as they are determined in this Law.

Although the TPKS Law provides more detailed definitions and clearer sanctions for various forms of sexual violence, criticism of its implementation cannot be ignored. One major criticism is the perception that the existing criminal justice system does not fully reflect justice, especially for victims. For example, the punishments given to perpetrators of sexual violence are often considered disproportionate or disproportionate to the psychological impact experienced by

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<sup>6</sup>Ivo Noviana, "Sexual Violence Against Children: Impact and How to Handle It," *Sosio Informa*. Vol. 1 No. 1, 2015, p. 16.

<sup>7</sup>Makmur, Acumen, Ce Kedzma Alvian, Indok Siti Balqis, Jihan Hanifah, Nabil Musyafa, and Tanti Kirana Utami. "Transparency and Accountability in the Legislative Process: A Case Study of the Formation of Laws According to Article 1 Number 1 of Law Number 12 of 2011." *Judge: Journal of Law* 6, no. 01 (2025): pp. 83-93.

<sup>8</sup>Suradipraja, Varsha Savilla Akbari Candra. "A victimological review of revenge porn victims according to Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence based on victim typology." *Padjadjaran Law Review* 12, no. 1 (2024): pp. 20-31.

victims.<sup>9</sup>The psychological impact of sexual violence can be profound and long-lasting, often inadequately addressed by the current legal system. Furthermore, there are concerns that existing legal arrangements could lead to the criminalization of victims, particularly in the context of complaint-based crimes, where victims who report sexual violence are potentially the ones being criminalized or blamed. This creates a double injustice for victims, who are already victims of sexual violence but then face additional stigma or legal pressure when seeking justice through the formal legal system.

The effectiveness of a law is determined not only by how well it is formulated, but also by how consistently and fairly it is applied within the criminal justice system. In this regard, it is crucial to evaluate whether the sanctions imposed on perpetrators of sexual violence are in accordance with the principles of justice, both for the victim and for society as a whole.<sup>10</sup>This principle of justice encompasses the aspect of proportionality, where the punishment given to the perpetrator must reflect the severity of the crime committed, as well as the aspect of rehabilitation, where the punishment must also include efforts to deter the perpetrator from repeating their actions in the future. However, in many cases, there is a view that the sanctions stipulated in the TPKS Law do not fully reflect these principles, especially in the context of non-physical sexual violence, which is often considered a crime of less severity than physical sexual violence, even though the psychological impact on the victim can be the same or even more severe. In many cases, victims of sexual violence face significant social stigma, which can prevent them from reporting the sexual violence they experienced or from seeking justice through the formal legal system.<sup>11</sup>

## **2. Research Methods**

This legal research uses an empirical legal research method. Empirical legal research is legal research that uses legal principles and principles to review, observe, and analyze problems in the research, as well as reviewing the implementation of the law in practice.<sup>12</sup>

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<sup>9</sup>Suryantoro, Dwi Dasa. "The Effectiveness of Legal Protection for Rape Victims in the Sexual Violence Crimes Act (UU TPKS)." *USRAH: Journal of Islamic Family Law* 5, no. 2 (2024): pp. 298-309.

<sup>10</sup>Safitri, Siti Shalima, Mohammad Didi Ardiansah, and Andrian Prasetyo. "Quo Vadis Restorative Justice in Cases of Sexual Violence Crimes After Law Number 12 of 2022 concerning Sexual Violence Crimes (A Study of Article 23 of the TPKS Law)." *Wara Sains Journal of Law and Human Rights* 2, no. 1 (2023): pp. 29-44.

<sup>11</sup>Al Hikmah, Putri Silvah, Dinda Fajarohma, and Hana Sabilillah. "Protection for Victims of Sexual Harassment Using a Restorative Justice Approach." *Hakim: Journal of Law and Social Sciences* 1, no. 3 (2023): pp. 204-224.

<sup>12</sup>Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetry*, Ghalia Indonesia, Jakarta, 1990, p. 33.

### **3. Results and Discussion**

#### **3.1. Criminal Accountability for Perpetrators of Sexual Violence Based on the Values of Justice**

The enactment of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS) is expected to eradicate sexual violence that occurs in Indonesia with a significant number of cases.<sup>13</sup> Legal regulations in the Law on Sexual Violence Crimes (TPKS) First, related to the limitations of legal instruments, the Criminal Code regulations only cover 2 things, namely rape and sexual harassment or molestation. Meanwhile, the TPKS Law classifies sexual violence into 9 categories with a broader definition and is able to better ensnare perpetrators which is contained in Article 4 paragraph (1) of the TPKS Law. Second, related to the high number of sexual violence in Indonesia. Cases of sexual violence show an increasing trend and have increased significantly, especially against women and children. Third, the TPKS Law provides protection for victims, victims' families, and witnesses as well as the rights that have been regulated in the TPKS Law, each of which has been regulated in this Law. In addition, perpetrators of sexual violence are given rehabilitation so that acts of sexual violence do not occur again.<sup>14</sup>

In Indonesian Criminal Law itself, sexual violence has been regulated in several laws, including the Criminal Code (KUHP), Law of the Republic of Indonesia No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) and Law No. 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection to Become Law.

The material legal aspects in the Law on Sexual Violence Crimes include 9 TPKS along with their elements of the crime.<sup>15</sup> 9 new norms are regulated in Article 4 paragraph (1) of the TPKS Law which stipulates 9 forms of sexual violence. Namely non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage. In addition, these include sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Another material legal aspect is that there are 10 TPKS whose criminal provisions are contained in other laws. This is regulated in Article 4 paragraph (2) of the TPKS Law which states that TPKS also includes rape, indecent acts, and sexual intercourse with children, indecent acts against children, and/or sexual

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<sup>13</sup> Suryawan, Made Budi, Fathur Rauzi, and Dhina Megayati. "A Legal Review of Legal Protection for Child Victims of Sexual Violence Based on Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence (A Study in the Jurisdiction of the West Lombok Police)." *Unizar Recht Journal (URJ)* 3, no. 4 (2024): pp. 612-618.

<sup>14</sup> Dr. (Cand) R. Valentina Sagala, 2022. 100 Questions and Answers on Sexual Violence. Publisher: Gramedia Pustaka Utama Jakarta. p. 5

<sup>15</sup> Sujasmin, SH "Determination of Material Criminal Law Aspects in Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence." *Public Knowledge* 2, no. 1 (2025): pp. 39-65.

exploitation of children. This also includes acts violating morality against the will of the victim, pornography involving children or pornography that explicitly contains violence and sexual exploitation, and forced prostitution. In addition, there are criminal acts of human trafficking aimed at sexual exploitation, sexual violence within the household, the crime of money laundering whose predicate crime is TPKS, and other crimes that are expressly stated as TPKS.<sup>16</sup>

The TPKS Law should complement existing laws regarding sexual violence and become a specialist law applicable to handling sexual violence cases. The TPKS Law contains detailed provisions, including criminal penalties, careful monitoring, and prevention of sexual violence.

Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS). Based on Chapter 1 General Provisions Article 1 Paragraph (1) of Law of the Republic of Indonesia Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS), it states that: Criminal Acts of Sexual Violence are all acts that fulfill the elements of a criminal act as regulated in this Law, and other acts of sexual violence as regulated in the Law as long as they are determined in this Law.

The Sexual Violence Crimes Act consists of eight chapters and 93 articles. This law also provides the legal framework for law enforcement officials to handle all forms of sexual violence. Comprehensive legal regulations, such as categorizing sexual violence as a crime, ensure investigation, prosecution, and court hearings, all while respecting and upholding human rights, dignity, and avoiding intimidation from anyone.<sup>17</sup>

Sexual violence, as defined in the TPKS Law, is a criminal act that violates the victim's bodily dignity. Various forms of sexual violence not regulated by the Criminal Code are included in the articles of the TPKS Law. Sexual violence refers to any sexual activity, which can take the form of assault or non-assault. Assault causes suffering in the form of physical injury, while non-assault causes emotional trauma. Forms of sexual violence include seduction, poking, forced hugging, groping, forced masturbation, oral sex, anal sex, and rape.<sup>18</sup>

1) General Provisions of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS).

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<sup>16</sup>Rusyidi, Binahayati, Antik Bintari, Hery Wibowo, Experience and Knowledge of Sexual Harassment: A Preliminary Study Among College Students, *Social Work Journal*, No. 01 Vol. 09, 2019.

<sup>17</sup> Nikmah, Asna Azizia, and Elisabeth Septin Puspoayu. "Synchronization of Legislation on Sexual Violence Following the Enactment of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence." *Novum: Jurnal Hukum* 10, no. 03 (2023): pp. 63-75.

<sup>18</sup>Maidin Gultom, 2014, *Legal Protection for Children and Women*, Bandung: PT RefikaAditama, p. 3

Based on Article (2) of the TPKS Law, the regulation of criminal acts of sexual violence is based on the principles of respect for human dignity, non-discrimination, the best interests of victims, justice, benefit and legal certainty.<sup>13</sup>. Based on Article (3) of the TPKS Law, the substance of the TPKS Law aims to prevent all forms of sexual violence, handle, protect and restore victims, enforce the law and rehabilitate perpetrators, create an environment free from sexual violence, and ensure that sexual violence does not recur.

## 2) Crimes of Sexual Violence (TPKS) in the TPKS Law

Article 4 paragraph (1) of the TPKS Law states that the crime of sexual violence consists of 9 (nine) Crimes of Sexual Violence, the regulations for which are regulated in the TPKS Law, namely as follows:

### a. Physical sexual harassment article (5)

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

In the TPKS Law, non-physical sexual harassment includes whistling, winking, and harassing stares specifically directed at the body, sexual desires, and/or reproductive organs with the intention of degrading a person's dignity and honor based on sexuality and/or morality. Based on the elements in this article, law enforcement officers will process cases of non-physical sexual violence. Non-physical sexual harassment is included in the complaint offense which requires a complaint from the injured person, but this provision does not apply to victims with disabilities.

### b. Non-physical sexual harassment article (6)

Convicted of physical sexual abuse:

a) Any person who commits a physical sexual act directed at the body, sexual desire, and/or reproductive organs with the intention of degrading a person's dignity and honor based on their sexuality and/or morality which is not included in other, more severe criminal provisions with a maximum prison sentence of 4 (four) years and/or a maximum fine of IDR 50,000,000.00 (fifty million rupiah).

b) Any person who commits a physical sexual act directed towards the body, sexual desire, and/or reproductive organs with the intention of placing someone under his/her unlawful control, whether within or outside of marriage, shall be subject to a maximum prison sentence of 12 (twelve) years and/or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah).



Any person who abuses position, authority, trust or influence arising from deception or a relationship of circumstances or benefits of vulnerability, inequality or dependency of a person, forces or by misleading that person to commit or allow sexual intercourse or indecent acts to be committed with him or with another person, shall be punished with a maximum imprisonment of 12 (twelve) years and/or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah).

c. Forced contraception article (8)

Any person who commits an act of forcing another person to use contraceptives by means of violence or threat of violence, abuse of power, deception, fraud, creating or exploiting a helpless condition which can result in the temporary loss of reproductive function, shall be punished by imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).

Forcing a victim to use contraception for a specific purpose and under threat of harm is considered a criminal act of sexual violence, which is punishable by the perpetrator's coercion to use the contraceptive device for a specific purpose. Coercion, as defined in this article, refers to the absence of consent from the victim or the victim's family.

d. Forced sterilization in article (9)

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

Forced sterilization on the victim for a specific purpose and under threat from the perpetrator is included in the crime of sexual violence which can be punished because there is an element of coercion from the perpetrator against the victim to carry out sterilization without permission from medical personnel or the victim themselves.

e. Forced marriage in Article (10)

Any person who unlawfully forces, places someone under his or her authority or another person, or abuses his or her authority to enter into or cause a marriage to be entered into with him or another person, shall be punished for forced marriage, with a maximum prison sentence of 9 (nine) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).

Forced marriage is clearly regulated in Article 10 paragraph (1) where there is no justification for forced marriage between the victim and the perpetrator, if this happens then the victim has the right to report the crime of sexual violence in the



form of forced marriage. Included in forced marriage as referred to in paragraph (1): a. Child marriage b. Forced marriage in the name of cultural practices or c. Forced marriage between the victim and the perpetrator of rape.

f. Sexual torture in article (11)

Any official or person acting in an official capacity, or any person acting under the influence or knowledge of an official, commits sexual violence against a person with the aim of:

a) Intimidation to obtain information or confessions from the person or a third party

b) Persecution or giving punishment for acts that have been suspected or committed and/or

c) Humiliating or degrading dignity for reasons of discrimination and/or sexuality in any form, shall be punished with sexual torture, with a maximum prison sentence of 12 (twelve) years and/or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah).

g. Sexual exploitation in article (12)

Any person who uses violence or threats of violence or abuses position, authority, trust, influence arising from deception or relationships of circumstances, vulnerability, inequality, helplessness, dependency of a person, debt trapping or giving payment or benefits with the intention of gaining profit, or exploiting the sexual organs or other body organs of that person aimed at sexual desires with him or with another person, shall be punished for sexual exploitation, with a maximum prison sentence of 15 (fifteen) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

h. Sexual slavery in article (13)

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

The elements of the crime of sexual slavery are:

a. Every person. Every person in the TPKS Law is an individual or a corporation.

b. Unlawfully. In the TPKS Law, unlawful acts are acts that violate the law, acts carried out outside of one's power or authority, and acts that violate the general principles in the TPKS Law.

c. Putting someone under one's or another's power

d. And makes him helpless

e. With the intent to sexually exploit her. Therefore, in applying this article, law enforcement officers will carefully examine whether these elements are met to categorize a case as a crime of sexual slavery. If any of these elements is not found in the case, it cannot be categorized as sexual slavery.

i. Electronic-based sexual violence in article (14).

"Electronic-based sexual violence" is contained in Article 14 of the TPKS Law:

1) Any person who is without the right:

a) Recording and/or taking sexually explicit images or screenshots against the will or without the consent of the person who is the object of the recording or image or screenshot.

b) Transmitting electronic information and/or electronic documents containing sexual content against the wishes of the recipient which is aimed at sexual desires and/or

c) Conducting stalking and/or tracking using electronic systems against people who are objects in electronic information/documents for sexual purposes, shall be punished for committing electronic-based sexual violence, with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah). Any person without rights in the TPKS Law is a person or corporation that does not have a valid legal basis to carry out the intended act. The basis for rights is obtained from statutory regulations, agreements or other legal basis.

2) In the case of the act as referred to in paragraph (1) carried out with the intention of:

a) To commit blackmail or threats, coercion or

b) Misleading and/or deceiving someone to do, allow something to be done, or not to do something, is punishable by imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 300,000,000.00 (three hundred million rupiah).

3) Electronic-based sexual violence as referred to in paragraph (1) is a complaint-based offense, unless the victim is a child or person with a disability.

4) In the case of acts as referred to in paragraph (1) letters a and b carried out in the public interest or in self-defense against criminal acts of sexual violence, they cannot be punished. In this case, the victim of electronic-based sexual violence as referred to in paragraph (1) letters a and b is a child or person with disabilities, the existence of the victim's will or consent does not eliminate criminal charges.

Criminal accountability for perpetrators of sexual violence is crucial for creating real protection for victims and ensuring that the legal process is oriented toward justice. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence represents a new milestone in Indonesian criminal law, as it, for the first time, places the victim's dignity at the center of law enforcement, rather than simply criminalizing the perpetrator. This foundation affirms that sexual violence is not only a violation of the law but also a denial of human dignity as guaranteed by the constitution.

The provisions regarding sexual violence crimes in this law provide clear definitions of various forms of conduct categorized as crimes, including sexual harassment, sexual exploitation, forced contraception, forced sexual intercourse, and electronic-based sexual violence. Article 4 emphasizes that any act that degrades, attacks, or restrains a person's body for sexual purposes is a criminal offense that is legally accountable. This regulation strengthens the position of victims who have previously struggled to prove elements of violence or coercion.<sup>19</sup>

Criminal responsibility in this law is based on the principle of respect for human dignity. Article 10 stipulates that perpetrators can be sentenced to imprisonment along with additional penalties such as restitution, confiscation of criminal profits, and rehabilitation. This sentencing scheme focuses not only on corporal punishment for the perpetrator but also requires restitution for the victim's losses, both material and psychological. This approach aligns with the value of substantive justice, which requires a balance between the victim's interests and the perpetrator's obligations.

In the TPKS Law, the main criminal penalties regulated are imprisonment and fines.<sup>20</sup> The threat of imprisonment related to the 9 (nine) types of sexual violence specifically regulated in the TPKS Law does not recognize the threat of minimum or shortest imprisonment. Instead, it regulates the threat of maximum imprisonment. 16 Similarly, the threat of criminal fines with the maximum fine. The threat of imprisonment and the threat of criminal fines in the TPKS Law is alternative/cumulative ("and/or"). It is true that there are prison sentences that are heavier than the old law that regulated sexual violence before the TPKS Law, such as in the Domestic Violence Law. However, the reason a new law was born with the same and more detailed provisions is because of the legal vacuum that regulates this, which provides a loophole for perpetrators to escape or not be tried at all. The proof is in cases of sexual violence crimes that were reported but not

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<sup>19</sup> Muhammad, Hasanuddin. "Legal Implications of the Regulation of the Rights of Victims of Sexual Violence in Law Number 12 of 2022 Concerning Sexual Violence." *Surya Kencana Dua Journal: Dynamics of Legal and Justice Issues* 9, no. 1 (2022): pp. 1-15.

<sup>20</sup> Kurniawati, Rani Dewi, and Yeni Nuraeni. "Synchronization of Rules in the New Criminal Code (Law Number 1 of 2023) and Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence in Order to Protect Victims of Criminal Acts of Sexual Violence." *Proceedings Series on Social Sciences & Humanities* 23 (2025): pp. 134-140.

prosecuted and only reached the investigation stage. Until now, they have been neglected and the perpetrators are free to roam.

Additional punishment of restitution (Article 16). In all TPKS cases which are threatened with imprisonment of 4 (four) years or more. The TPKS Law requires the judge to determine the amount of restitution that must be paid by the perpetrator or victim. In this case, the fine is an amount of money that the perpetrator must and is obliged to pay to the state, while restitution is an amount of money that the perpetrator pays to the victim. Furthermore, Article (17) of the TPKS Law regulates actions in the form of rehabilitation intended for perpetrators and victims with the aim of recovering from physical and psychological disorders.<sup>21</sup>

Article 65 states that an increased sentence may be imposed if the perpetrator is in a dominant position, such as a superior, educator, or someone living in the same household as the victim. This increased sentence reflects the law's bias toward victims, who are often socially vulnerable and unable to resist the perpetrator's pressure.

This law also emphasizes the importance of protecting victims from the outset of the legal process. Article 66 stipulates the victim's right to receive psychological support, legal aid, and protection from threats or intimidation. This mechanism demonstrates that the criminal justice system no longer merely seeks to prosecute perpetrators but also safeguards the physical and mental safety of victims throughout the legal process. This is a welcome change, considering that previous practices often discouraged victims from reporting crimes for fear of re-victimization.

In terms of providing evidence, this law provides a significant breakthrough by expanding the scope of evidence. Article 25 recognizes evidence in the form of electronic recordings, expert testimony, and psychological examination results. This provision simplifies the process of proving the case, as sexual violence often occurs without direct witnesses. With this expansion of evidence, perpetrators can no longer excuse themselves by claiming lack of physical evidence, while victims gain more realistic access to proving their crimes.<sup>22</sup>

Punishment to ensure that the perpetrator does not repeat his actions.<sup>23</sup>Provisions regarding perpetrator rehabilitation, combined with imprisonment, illustrate that the legal approach is not only repressive but also

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<sup>21</sup> Sujasmin, SH "Determination of Material Criminal Law Aspects in Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence." *Public Knowledge* 2, no. 1 (2025): pp. 39-65.

<sup>22</sup> Nova, Efren. "Legal Implications of Proving Criminal Acts of Sexual Violence in the Perspective of Law Number 12 of 2022 for the Fulfillment of Justice for Victims." *Unes Journal of Swara Justisia* 9, no. 1 (2025): pp. 208-219.

<sup>23</sup> Nurfatlah, Titin, Sukma Hidayat Kurnia Abadi, and Saparudin Efendi. "The Concept of Recidivism in the National Criminal Code Reviewed from the Perspective of the Purpose of Punishment." *Unizar Law Review* 7, no. 1 (2024): pp. 90-101.

preventative. The state strives to create conditions in which perpetrators understand the impact of their crimes, thus reducing the likelihood of repeating them. This effort is implemented without compromising the victim's right to a sense of security.

The value of justice in sexual violence crimes extends beyond sanctions to victim recovery. Article 19 stipulates the victim's right to restitution, which the perpetrator must pay. This mechanism provides a concrete form of accountability so that victims can recover from profound trauma. This affirmation demonstrates that justice is not solely determined by the length of the perpetrator's sentence but also by the extent to which the victim regains her rights.<sup>24</sup>

This law also addresses prevention as part of the state's accountability for the rise in sexual violence. Prevention provisions include education, strengthening a culture of anti-violence, and establishing a secure reporting system. Therefore, criminalizing perpetrators is not a stand-alone measure but rather part of a systematic effort to eliminate sexual violence from both public and domestic spaces.

Criminal accountability based on the values of justice in the TPKS Law aims to establish a legal system that is sensitive to the needs of victims, firm against perpetrators, and adaptive to the development of modern sexual crimes. With a more humane legal structure, Indonesia is moving toward a legal system capable of providing effective protection for every citizen without allowing perpetrators to hide behind loopholes or unequal power relations.

### **3.2. Obstacles and Solutions in Law Enforcement Against Perpetrators of Sexual Violence**

Indonesia as a country based on law adheres to several systems at once, namely civil law, common law, customary law, and Islamic law.<sup>25</sup> The system refers to binding legal regulations, but is still accepted by the community which are then implemented to achieve a state goal, as stated in the preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) paragraph four. Understanding this goal, the presence of law in a country is positioned as a comprehensive means of protection for the community. As outlined in Article 28G paragraph (2) of the 1945 UUD NRI, every citizen has the right to be free from torture or treatment that belittles human dignity and honor. Therefore, the law in a country is required to be able to protect the constitutional rights of every citizen, both the right to life, the right to freedom from all forms of threats or violence,

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<sup>24</sup> Asifa, Najwa Faila. "A Review of the Additional Sanction of Castration in Cases of Sexual Abuse Against Children in Law Number 17 of 2016 concerning Child Protection as an Amendment to Law Number 23 of 2002." *Journal of Legal Innovation* 6, no. 3 (2025). P. 21

<sup>25</sup> Syauta, Alexander. "Comparison of European continental legal systems and Indonesian national legal systems." *Indonesian Law Enforcement Journal* 3, no. 1 (2022): pp. 1-13.

then the right to protection and the right to justice, all of which have urgency in their implementation.

Nationally, the implementation of positive law was previously regulated in the Criminal Code (KUHP),<sup>26</sup> However, it does not specifically guarantee the protection of victims, and there are also no government efforts related to preventive measures regarding the spread of sexual violence cases at both the central and regional levels. According to the National Commission on Violence Against Women (Komnas Perempuan), before the enactment of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), many cases of sexual violence were not recorded and some of the legal processes were forced to stop midway, resulting in forced marriages between perpetrators and victims. As an example of a detikNews media report, Pandeglang psychologist Rika Kartikasari revealed facts regarding cases of sexual abuse against children that occurred in her area. It turned out that many child survivors or victims of rape ended up being married to the perpetrators under the pretext of wanting the problem to be resolved quickly and to protect the good name of both families.

Responding to this phenomenon was one of the forerunners to the formation and ratification of the TPKS Law.<sup>27</sup> This regulation is a breath of fresh air for Indonesian society, as it outlines the criminalization of sexual violence cases, the legal threats, and guarantees the rights of victims. The enactment of the TPKS Law will certainly provide a definitive legal framework and protection for victims of sexual violence. Further investigation reveals that this regulation criminalizes at least ten acts of sexual violence and categorizes them as crimes. This law aims to prevent, coordinate, and supervise law enforcement officials at the central and regional levels in dealing with these cases, while also guaranteeing the rights of victims.

Sexual violence is a type of violence rooted in the imbalance of power relations between the perpetrator and the victim. In cases of sexual violence, the imbalance is often caused by the imbalance of power relations that often occurs between men and women. When the perpetrator has greater control over the victim, the imbalance is exacerbated by the increasing burden borne by the victim, namely the difficulty of proving the case and the lack of support in the community to fight against sexual violence. Sexual violence can be perpetrated by anyone, including in personal relationships. Sexual violence perpetrated within personal relationships can be viewed from a power perspective.

Besides power relations, the cause of sexual violence is the issue of gender equality. Gender is a concept that refers to the differentiation of roles, status, and responsibilities of men and women that occurs as a result of and can change due

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<sup>26</sup> Malau, Parningotan. "Review of the New Criminal Code (KUHP) 2023." *AL-MANHAI: Journal of Islamic Law and Social Institutions* 5, no. 1 (2023): pp. 837-844.

<sup>27</sup> Iskandar, Salma Amelinda. *TPKS Law: An Effort by a Legal State to Make Its People Happy? Sovereignty* 2, no. 3 (2023): pp. 282-291.

to social and cultural conditions in society. Some people believe that the roles played by men and women are based on their biological status. Furthermore, status within gender is often associated with certain roles. As part of social dynamics, gender construction is normal. However, in everyday life, gender construction often accompanies various actions that have the potential to harm one particular gender, one of which can lead to sexual violence. Gender equality refers to the same rights, responsibilities, and opportunities between women and men. Gender issues and violence against women are interrelated.

In a patriarchal culture, a growing issue and problem is sexual violence, which frequently occurs against women. Gender inequality and injustice can lead to fear, reluctance, or a lack of confidence in expressing oneself in interpersonal relationships. Because of this, men's opinions are more dominant and tend to be perceived as more rational and able to communicate clearly, resulting in women often having difficulty expressing their opinions and are often ignored. Gender and gender inequality often influence various relationships and social issues based on gender issues.

Sexual violence is also caused by social inclusion issues.<sup>28</sup> Sexual violence occurs due to considerations of unequal power relations and inequalities experienced by individuals due to their social identity. Social identity directs how this identity interacts and influences cases of discrimination, such as harassment and violence, bullying, and reproductive issues and other vulnerabilities experienced by victims. The concept of social inclusion protects fundamental human rights and freedoms from discrimination and marginalization based on gender or other related vulnerabilities, such as race, religion, ability, social class, ethnicity, culture, education, health, opportunities, access, opportunities, benefits, and so on. Social inclusion is also a process in which efforts are made to ensure equal opportunities for all. Social inclusion issues also occur in vulnerable groups with disabilities who have limited access to employment and education as well as access to other services. When compared to groups without disabilities, they have very unequal access and employment opportunities.

Regarding sexual violence, the state has an obligation to protect and ensure that citizens feel safe and free from all forms of student violence as mandated by Pancasila and the 1945 Constitution of the Republic of Indonesia. All forms of sexual violence, both within the home and within the family, constitute human rights violations that violate human dignity and dignity, and therefore, all such acts must be prevented and eliminated. Women who have been victims of sexual crimes must receive protection from the government and society to ensure their

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<sup>28</sup> Siswanto, Heni, Ahmad Irzal Fardiansyah, Nikmah Rosidah, and Rini Fathonah. "An Inclusive Approach by the Police in Providing Legal Protection for Children with Disabilities Who Are Victims of Sexual Violence." *Justicia Sains: Journal of Legal Studies* 10, no. 1 (2025): pp. 349-366.



right to feel safe and free from violence or threats of violence, and all forms of violence or torture that degrade women's dignity.

The causes of the rise in sexual violence against women and children can be classified into two factors: internal and external. Internal factors are those that originate within the perpetrator. These internal factors are further divided into three categories:<sup>29</sup>

1) The absence of morals in the perpetrator.

Morality is the most important element in human life. Morality can humanize others. Morality also contains teachings of kindness, love, and compassion, all of which are evident in human behavior. Someone who intentionally commits a heinous act should have their morality questioned.

2) Psychology of the perpetrator.

This condition is usually influenced by a deviant sexual orientation. This usually occurs when a person cannot control their sexual urges and finds it very difficult to protect themselves from the sexual stimuli they encounter in life, which can lead to immoral behavior.

3) Biological Perpetrator.

The perpetrator's unmet biological needs are also often a factor in sexual crimes. A perpetrator who is unable or unwilling to channel their desires often acts out on others, resulting in victims.

Since Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law) was enacted on May 9, 2022, TPKS cases have remained rampant, with various methods increasingly evolving. One of these is the increasingly widespread form of sexual harassment against women and children, namely "web grooming," a new form of sexual harassment and exploitation that involves deceiving victims using social media.<sup>30</sup> Sexual violence is now even more prevalent in educational settings, including religious-based education. Perpetrators, who should be educators and role models for their students, are instead sexual predators.

The ratification of the TPKS Law represents an effort by lawmakers to address public pressure over the rise in sexual violence cases in various regions across

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<sup>29</sup> Ahyun, Faizah Qurotul, Solehati Solehati, and Benny Prasetya. "Factors causing sexual harassment and the psychological impacts experienced by victims." *Al-ATHFAL: Journal of Child Education* 3, no. 2 (2022): pp. 92-97.

<sup>30</sup> Ida Rachmawati et al., Education for Children in Preventive Efforts to Prevent Sexual Crimes Using the Child Grooming Method, *Reswara: Journal of Community Service*, 4 No. 1 (January 2023): pp. 332-339.

Indonesia. The academic text of the TPKS Bill clearly states that the enactment of the TPKS Law constitutes a legal reform effort aimed at, among other things:<sup>31</sup>

- 1) prevent incidents of sexual violence;
- 2) develop and implement prevention, handling, protection and recovery mechanisms that involve the community and take the victim's perspective, so that victims can overcome the violence they experience and become survivors;
- 3) provide justice for victims of sexual violence, through rehabilitation, criminal sanctions, and firm action against perpetrators of sexual violence;
- 4) ensuring the implementation of state obligations, the role of the family, community participation, and corporate responsibility in creating an environment free from sexual violence.

The Criminal Code also regulates sexual violence in various articles. Sexual violence can be prosecuted under the indecent assault provisions, set out in Articles 289 to 296 of the Criminal Code.<sup>32</sup> For example, Article 289 of the Criminal Code regulates the threat for anyone who forces another person to commit or allow an indecent act to be committed with violence or threat of violence, is threatened for committing an act that attacks moral honor, with a maximum prison sentence of nine years. In addition, Article 290 of the Criminal Code, which determines that the perpetrator of a criminal act is threatened with a maximum prison sentence of 7 years, namely if the perpetrator commits the act (indecent act) when the victim is unconscious or helpless, the perpetrator commits the act to a victim who is still a minor (under fifteen years old / not yet ready to marry) and if the perpetrator persuades someone who is known to be under fifteen years old or not yet ready to marry to commit indecent acts or have sex outside of marriage.

In addition to the Criminal Code, the Domestic Violence Law also regulates sexual violence. However, the provisions of sexual violence in the Domestic Violence Law are limited to domestic violence. For example, Article 8 of the Domestic Violence Law regulates the following forms of domestic violence:<sup>33</sup>

- a. forced sexual intercourse committed against a person residing within the household;

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<sup>31</sup>Legislative Body, Academic Paper on the Draft Law of the Republic of Indonesia concerning Criminal Acts of Sexual Violence, (Jakarta: House of Representatives of the Republic of Indonesia, 2021), p. 8

<sup>32</sup> Pramufianto, Ricky Ardian, Johny Krisnan, Basri Basri, Yulia Kurniaty, and Hary Abdul Hakim. "Comparison of Verbal Sexual Harassment Crimes in the Old Criminal Code and the New Criminal Code." *Borobudur Law and Society Journal* 2, no. 6 (2023): pp. 271-278.

<sup>33</sup> Nurisman, Eko. "A Review of the Challenges of Law Enforcement for Sexual Violence Crimes Following the Enactment of Law Number 12 of 2022." *Journal of Indonesian Legal Development* 4, no. 2 (2022): pp. 170-196.

b. forced sexual relations with one person within the household with another person for commercial purposes and/or certain purposes.

Law enforcement against perpetrators of sexual violence under Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence faces various obstacles at the regulatory, institutional, and cultural levels. Although this law was expected to be a breakthrough in victim protection, its implementation has been hampered by various technical and structural obstacles, often resulting in its objectives not being achieved in practice.

The first obstacle relates to the still-complicated interpretation of the norm. Although the TPKS Law provides a more comprehensive definition of the types of sexual violence, a number of law enforcement officials do not fully understand the scope of the crimes covered by it. This lack of understanding has led to some reports being rejected or not being processed seriously because they are deemed to not meet the formal requirements.

Another problem is the limited capacity of law enforcement to handle sexual violence cases. Investigators, prosecutors, and judges require specialized knowledge of the psychological dynamics of victims, the nature of evidence, and sensitive examination techniques. However, training is still minimal, resulting in legal proceedings often lacking victim-centeredness.

Another obstacle arises from the lack of supporting facilities in law enforcement agencies. Victim-friendly examination rooms are not yet available in many areas, even though their presence is crucial for victims to provide information without fear. The absence of these facilities often discourages victims from pursuing legal proceedings.

The next obstacle relates to the need for evidence. The TPKS Law does expand the scope of evidence, but authorities still adhere to conventional approaches that require physical evidence. Yet, many sexual assaults occur without visible traces. Limited understanding of psychological and electronic evidence hampers the process.

Support services are not yet ready. The articles governing assistance for victims have not been accompanied by a sufficient number of human resources to support them. Many regions lack psychologists, counselors, or social workers trained in handling sexual violence cases, leaving victims without adequate support.

Social norms that still blame victims lead many survivors to remain silent. Victims often fear social stigma, especially in communities that still view sexual violence as a family shame. This culture of victim-blaming discourages reporting cases, preventing perpetrators from being prosecuted.

Lengthy bureaucratic processes add to the problem. Victims often have to move from one institution to another before their cases are resolved. The complicated process creates mental fatigue for survivors, leading many to abandon the legal process before reaching court.

Weak inter-agency coordination. The TPKS Law requires cooperation between the police, prosecutors, social services, health services, women's and children's protection units, and rehabilitation institutions. However, coordination in the field is often lacking, resulting in a lack of integration in handling.

Inequality of resources between regions is also a barrier. Urban areas typically have more comprehensive facilities than remote areas. This disparity makes it difficult for victims in rural areas to access medical, psychological, and legal services.

Another weakness is evident in the restitution mechanism. Although the law requires perpetrators to pay restitution, its implementation is very difficult because many perpetrators lack financial capacity. As a result, victims fail to obtain the restitution rights that the state should guarantee.

Lack of public awareness of the law. Many people don't understand the rights guaranteed by the TPKS Law, so they don't know the reporting procedures or the types of assistance they can receive. This lack of public understanding further lowers reporting rates.

Budgetary constraints are another obstacle. Implementation of the TPKS Law requires funding for facilities, mentoring services, training, and reporting system development. However, budget allocations are inadequate, resulting in half-hearted implementation.

Authorities are afraid to confront perpetrators with high social standing. Some perpetrators come from government officials, educators, or community leaders, so law enforcement often lacks objectivity. This power relationship puts victims at a disadvantage again. Many victims experience deep trauma, making it difficult to provide detailed information. Unfriendly interrogations actually worsen their mental health and weaken the quality of evidence.

The limited monitoring mechanisms for offenders after serving their sentences also pose a weakness in the system. There is no adequate oversight system to ensure offenders do not reoffend, thus maintaining a high risk of recidivism.

Weak utilization of reporting technology. Many victims actually prefer to report online, but digital services are not yet evenly distributed and integrated with the national legal system. Yet, the use of technology can expedite the process of recording and gathering evidence.

The solution to addressing these obstacles is to strengthen the capacity of officers through ongoing training on gender-sensitive examination techniques, alternative forms of evidence, and an understanding of victim dynamics. Training should be mandatory for all investigators, prosecutors, and judges. Expand victim-friendly facilities across all regions. The development of safe and comfortable examination rooms, counseling services, and legal assistance will increase victims' sense of security. Local governments must ensure these services are available free of charge. Victim-friendly facilities should be available throughout the region, including safe examination rooms, counseling services, psychologists, and legal assistance. Furthermore, it is crucial to strengthen coordination between agencies, from the police and prosecutors, service institutions, and hospitals, to ensure integrated treatment and avoid burdening victims with lengthy bureaucratic processes. Increasing budget allocation is also fundamental to providing adequate facilities, technology, and human resources. Strengthening inter-agency coordination, budget optimization, the development of digital-based complaint services, and a post-sentencing monitoring system for perpetrators are crucial. Strengthening digital-based reporting mechanisms allows victims to access services more easily and safely, especially those who are afraid to report directly. The government also needs to ensure the availability of support services in remote areas to reduce disparities in access. Furthermore, restitution and victim recovery mechanisms must be implemented effectively, with the option of state support when perpetrators are unable to pay. Massive public awareness campaigns regarding victims' rights and the obligations of authorities are key to eradicating the culture of victim-blaming, increasing reporting and preventing perpetrators from using the social fears that have traditionally silenced victims of sexual violence. With a comprehensive approach that combines legal, psychological, and social aspects, enforcement of the TPKS Law can be more effective and deliver justice to victims of sexual violence.

#### **4. Conclusion**

The criminal accountability of perpetrators of sexual violence in Law No. 12 of 2022 concerning the TPKS presents important reforms through regulations that are far more comprehensive than the Criminal Code, by recognizing 19 forms of sexual violence, expanding the means of evidence, and guaranteeing the right to assistance, protection, recovery, restitution, and increased sentences for perpetrators in dominant positions, so that victims are placed at the center of legal protection in a more preventive, repressive, and restorative approach. However, its implementation still faces serious obstacles such as unequal power relations, a patriarchal culture, stigma, inadequate officer capacity, a lack of victim-friendly facilities, evidence that still relies on physical evidence, weak inter-agency coordination, convoluted bureaucracy, and budget constraints, especially when the perpetrator has high social status. Ideal enforcement requires strengthening officer capacity, equitable distribution of victim service facilities, a secure digital

reporting system, more realistic implementation of restitution including state support if the perpetrator is unable to afford it, and widespread outreach to eliminate stigma and raise awareness of victims' rights. This integrated approach is what enables the TPKS Law to truly deliver justice, effective protection, and comprehensive recovery for survivors of sexual violence in Indonesia.

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