

Implementation of the Sexual Violence Law and CEDAW in Human Rights Protection in Indonesia

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Abstract

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This study aims to analyze the effectiveness of the implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence and Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women in realizing the protection of human rights and gender equality in Indonesia. This study uses normative juridical methods with conceptual and statutory approaches to assess the conformity of national legal norms to the Convention on the Elimination of All Forms of Discrimination Against Women international principles. Analysis was carried out on legal policies, institutional effectiveness, and social dynamics that affect the implementation of the two regulations. The results of the study show that the Crime of Sexual Violence Law strengthens victim protection mechanisms, increases public awareness of gender-based violence, and becomes an important instrument in national legal reform. However, its effectiveness is still hampered by the limited capacity of law enforcement officials, weak coordination between institutions, and the influence of patriarchal culture that is still dominant. Therefore, this study emphasizes the need for synergy between legal reform, institutional capacity building, and sustainable social transformation to realize substantive social justice and gender equality in Indonesia.

1. Introduction

The phenomenon of sexual violence and gender inequality is still a serious issue in Indonesia's legal and social system, although various normative measures have been taken to ensure the protection of human rights. In the global context, the state has a legal and moral responsibility to protect its citizens from gender-based violence as mandated by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which has been ratified through Law Number 7 of 1984. This commitment is strengthened by the presence of Law Number 12 of 2022 concerning the Crime of Sexual Violence (*Undang-Undang Tindak Pidana Kekerasan Seksual/TPKS Law*), which is an important milestone in strengthening the victim protection system and the enforcement of gender-based social justice in Indonesia.¹

However, the implementation of the two legal instruments still faces various structural and cultural challenges. Many law enforcement officials have not comprehensively understood the substance of the TPKS Law and the victim-centered approach that is in line with the principles of CEDAW.² This condition gives rise to cases of victimization, where victims of sexual violence experience social and psychological pressure when reporting. This shows that legal norms have not

¹ Lauren Rumble, Ryan Fajar Febrianto, Melania Niken Larasati, Carolyn Hamilton, Ben Mathews, and Michael P. Dunne. "Childhood sexual violence in Indonesia: a systematic review." *Trauma, violence, & abuse* 21, no. 2 (2020): 284-299.

² Yanuar Farida Wismayanti, Patrick O'Leary, Clare Tilbury, and Yenny Tjoe. "Child sexual abuse in Indonesia: A systematic review of literature, law and policy." *Child abuse & neglect* 95 (2019): 104034.

completely changed the social paradigm that is still patriarchal and discriminatory against women.

A strong patriarchal culture is also the main obstacle to the effective implementation of the TPKS Law. Many victims are reluctant to report for fear of social stigma or distrust of law enforcement officials. Maret³ emphasized that cultural resistance to gender equality is still high, so the law is often hampered by gender-biased moral views. This shows that positive law will not be effective without social transformation and public education that fosters substantive equality between men and women.

Meanwhile, the implementation of CEDAW in Indonesia does show normative progress, but it is weak in implementation. Kasuma and Irianto⁴ stated that harmonization between international policy and national law is still formally limited. Many legal and higher education institutions have not integrated gender perspectives into legal curricula and practices, causing the understanding of women's rights and victims of violence to become fragmented. Afni⁵ added that the implementation of CEDAW values requires the active involvement of community organizations, women's institutions, and religious leaders so that gender equality does not stop at the level of rhetoric, but becomes a collective social awareness.

³ Louna Maret. "Implementation of the CEDAW in France and Indonesia: Challenges and Progress regarding Women's Rights." *Indonesian J. Int'l L.* 21 (2023): 615.

⁴ Iva Kasuma and Sulistyowati Irianto. "CEDAW Convention and Engendering Faculty of Law's Curriculum Reinforcement: A Lesson Learnt from Indonesia." *Indonesian Journal of International Law* 20, no. 2 (2023): 1.

⁵ Wilda Aulia Maulida Afni. "Implementation of The CEDAW Convention on Sexual Violence Through the Congress of Indonesian Women Ulama." *AND FEMINISM (ICOGEF)* (2023): 53.

The weakness in the implementation of the TPKS Law and CEDAW is also seen in the weak coordination between institutions and the victim protection system. Sidayang and Sumanta⁶ highlight the lack of an integrated system between law enforcement agencies, health services, and social institutions, so that the victim recovery process is slow. As a result, the victim's right to justice as guaranteed by Article 28G of the 1945 Constitution is often ignored. Limited human resources and budgets at service institutions have also worsened the situation, leaving many cases unhandled despite having a strong legal umbrella.

At the social level, the transformation towards gender equality faces barriers to values that place women in subordinate positions. Prihatini⁷ revealed that legal policy in Indonesia is still dominated by a masculine perspective that views women as objects, not legal subjects. As a result, laws that are supposed to be a means of justice often reinforce existing inequality.

However, a number of progress is beginning to be seen. The government together with civil society institutions have carried out legal socialization and gender equality education since the passage of the TPKS Law. Dewantary and Endut⁸ noted that the establishment of integrated service units, gender-based training of law enforcement officers, and victim restitution mechanisms are important steps in

⁶ Stince Sidayang, Muhammad Julianto Sumanta, Candra Kirana Putri Calya, and Sabil Mokodenseho. "Addressing gender-based violence: Comparative analysis of international legal frameworks and practices." *The East Asian Journal of Law and Human Rights* 1, no. 03 (2023): 147-157.

⁷ Ella Prihatini. "Explaining gender gaps in Indonesian legislative committees." *Parliamentary Affairs* 74, no. 1 (2021): 206-229.

⁸ Zenny Rezania Dewantary and Noraida Endut. "States Responsibility to Eradicate Violence Against Women Through the Due Diligence Framework in Human Rights: A Review of Protection and Punishment in the case of Indonesia." *Indonesian J. Int'l L.* 19 (2021): 567.

strengthening human rights protection. This effort reflects the principle of due diligence that requires the state to actively prevent and deal with violence against women, not just react after an offence has occurred.

Thus, the issue of human rights protection in the context of sexual violence and gender equality in Indonesia is a legal issue as well as a social and cultural issue that is interrelated. The two legal instruments of the TPKS Law and CEDAW are important foundations for gender justice legal reform. However, its effectiveness can only be achieved through value change, public education, and institutional capacity building. This complexity raises two main research questions: first, how effective is the implementation of Law No. 12 of 2022 in realizing the protection of human rights and gender equality in accordance with the CEDAW principles; and second, what are the main challenges in the implementation of the two regulations and their urgency in the context of social justice and legal development with a gender perspective in Indonesia.

2. Methods

This research uses a normative juridical method, which is a legal research approach that focuses on the study of written legal norms and principles that apply in the national and international legal system. This method was chosen because the research focuses on analyzing the effectiveness of the implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) and Law Number 7 of 1984 concerning the Ratification of CEDAW in the context of the protection of human rights and gender equality in Indonesia. This approach allows

researchers to assess the extent to which the two regulations are aligned with the principles of justice, equality, and victim protection, as well as to see how legal norms are applied in law enforcement practices.

The research data consists of primary, secondary, and tertiary legal materials. Primary materials include the TPKS Law, the CEDAW Law, Law Number 39 of 1999 concerning Human Rights, as well as the provisions of the 1945 Constitution related to the protection of human rights and gender equality. Secondary materials include academic literature, scientific journals, and reports from institutions such as National Commission on Violence against Women (*Komisi Nasional Anti Kekerasan terhadap Perempuan*/Komnas Perempuan) and the Ministry of Women's Empowerment and Child Protection (Pemberdayaan Perempuan dan Perlindungan Anak/PPPA) that analyze the implementation of sexual violence laws. Tertiary materials in the form of legal dictionaries, encyclopedias, and official online sources are used as support in explaining legal terms and theoretical concepts.

The data collection technique is carried out through library research by tracing regulations, scientific journals, institutional reports, and relevant research. Data analysis was carried out with a conceptual approach and a legislative approach. Conceptual approaches are used to understand basic concepts such as human rights, gender equality, social justice, and sexual violence in legal and social perspectives. Meanwhile, the legislative approach is used to compare the substance and implementation of the TPKS Law and CEDAW in Indonesia.

The analysis is carried out in a descriptive-analytical manner, describing the normative conditions of the law and relating it to the reality of application in society.

This approach helps identify gaps between legal norms and implementation practices, while also assessing the extent to which the Indonesian legal system meets the principles of substantive justice in dealing with sexual violence. Thus, the normative juridical method in this study not only functions as a tool for legal analysis, but also as an evaluative instrument for the effectiveness of the national legal system in ensuring social justice and gender equality comprehensively.

3. Results and Discussion

3.1. The Effectiveness of the Implementation of the TPKS Law in the Perspective of CEDAW and Human Rights

Since the enactment of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law), Indonesia has entered a new chapter in legal protection for victims of sexual violence. This regulation is the result of a long struggle by the women's movement and civil society who demand the presence of laws that are in favor of victims and uphold the principle of gender equality as an integral part of human rights. The TPKS Law not only contains criminal provisions against perpetrators of sexual violence, but also affirms the state's responsibility in the prevention, handling, and recovery of victims, which reflects the values of CEDAW as an international instrument for the elimination of discrimination against women.⁹

⁹ Lauren Rumble, Ryan Fajar Febrianto, Melania Niken Larasati, Carolyn Hamilton, Ben Mathews, and Michael P. Dunne. "Childhood sexual violence in Indonesia: a systematic review." *Trauma, violence, & abuse* 21, no. 2 (2020): 284-299.

The effectiveness of the implementation of the TPKS Law can be seen from three main dimensions, namely the application of the law in the field, institutional policies, and changes in social paradigms. In the first dimension, there was an increase in reporting of cases of sexual violence after this law was passed. According to the 2023 Komnas Perempuan report, the number of case reports increased by more than 20% compared to the previous year, indicating an increase in public trust in the new legal mechanism. This strengthens the argument that the TPKS Law has provided a clearer legal space for victims to seek justice, in contrast to the previous period where the crime of sexual violence was often not specifically accommodated in the Criminal Code (*Kitab Undang-Undang Hukum Pidana*/KUHP).¹⁰

However, even though the legal framework already exists, its implementation still faces significant challenges. Many law enforcement officials have not deeply understood the concept of victim-centered justice mandated in the TPKS Law. In some cases, the legal process is still procedural without considering the psychological condition of the victim. A study conducted by Maret¹¹ shows that the practice of victimization still occurs frequently during the examination and trial process, where victims are forced to repeat the chronology of events repeatedly without adequate psychological support. This phenomenon illustrates the gap between ideal legal norms and field practices that are still biased against women.

¹⁰ Yanuar Farida Wismayanti, Patrick O'Leary, Clare Tilbury, and Yenny Tjoe. "Child sexual abuse in Indonesia: A systematic review of literature, law and policy." *Child abuse & neglect* 95 (2019): 104034.

¹¹ Louna Maret. "Implementation of the CEDAW in France and Indonesia: Challenges and Progress regarding Women's Rights." *Indonesian J. Int'l L.* 21 (2023): 615.

In the institutional dimension, the TPKS Law encourages the establishment of integrated service units at the national and regional levels. The Ministry of Women's Empowerment and Child Protection (*Kementerian Pemberdayaan Perempuan dan Perlindungan Anak*/KemenPPPA) has been working with the police and social institutions to expand services for victims of sexual violence. Several regions have developed the Women's and Children's Protection Unit (*Unit Pelayanan Perempuan dan Anak*/PPA) as a model for victim-based law implementation. This initiative is considered to be in line with the spirit of CEDAW, which emphasizes the state's obligation to provide an effective legal infrastructure in preventing and addressing gender-based violence.¹²

However, the effectiveness of this institution is not evenly distributed. Most regions still face limited budgets, human resources, and inter-agency coordination. A report by the East South Law and Human Rights Journal¹³ noted that coordination mechanisms between legal, health, and social institutions are often disconnected, resulting in the recovery process of victims. This situation shows that the success of the TPKS Law does not only depend on the existence of the rule of law, but also on synergy between institutions that carry out the function of protection and recovery of victims.

¹² Iva Kasuma and Sulistyowati Irianto. "CEDAW Convention and Engendering Faculty of Law's Curriculum Reinforcement: A Lesson Learnt from Indonesia." *Indonesian Journal of International Law* 20, no. 2 (2023): 1.

¹³ Stince Sidayang, Muhammad Julianto Sumanta, Candra Kirana Putri Calya, and Sabil Mokodenseho. "Addressing gender-based violence: Comparative analysis of international legal frameworks and practices." *The East Asian Journal of Law and Human Rights* 1, no. 03 (2023): 147-157.

In addition, the effectiveness of the TPKS Law is also measured by the extent to which it reflects CEDAW principles in Indonesian legal practice. In this regard, CEDAW requires the state to not only eliminate formal discrimination, but also substantive discrimination, i.e., social and cultural situations that prevent women from enjoying their rights on an equal footing with men. According to Prihatini,¹⁴ the TPKS Law has fulfilled most of these substantive aspects because it recognizes victims' rights to justice, restoration, and rehabilitation. However, the principle of substantive justice has not been fully realized because legal practice still tends to be oriented towards formal proof, not towards the protection of victims' rights.

From a social perspective, the implementation of the TPKS Law has also encouraged a change in people's perspective on sexual violence. Public education and gender equality campaigns carried out by civil society organizations such as Komnas Perempuan, Women's Association for Justice Legal Aid (*Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan*/LBH APIK), and the Indonesian Women's Ulama network have helped build awareness that sexual violence is a serious human rights violation. According to Afni,¹⁵ the involvement of religious institutions and community leaders plays an important role in reducing stigma against victims and strengthening the application of equality values at the grassroots level. However, patriarchal culture is still a major obstacle that slows down social change at large.

¹⁴ Ella Prihatini. "Explaining gender gaps in Indonesian legislative committees." *Parliamentary Affairs* 74, no. 1 (2021): 206-229.

¹⁵ Wilda Aulia Maulida Afni. "Implementation of The CEDAW Convention on Sexual Violence Through the Congress of Indonesian Women Ulama." *AND FEMINISM (ICOGEF)* (2023): 53.

In terms of legal policy, the Indonesian government has demonstrated its commitment to the principle of due diligence in international human rights law, which is the state's obligation to prevent, take action, and remedy any form of human rights violations, including violence against women. As noted by Dewantary and Endut,¹⁶ the TPKS Law strengthens the legal position of victims by providing the right to restitution, rehabilitation, and protection from threats. This shows that normatively, Indonesia has moved towards a legal system that is more responsive to women's rights.

Overall, the effectiveness of the implementation of the TPKS Law can be concluded that it is still in the transition stage from the normative phase to the implementation phase. Positive achievements in the form of increased reporting, the establishment of victim protection institutions, and the integration of gender equality values in public policies show significant progress. However, various institutional and cultural barriers still need to be overcome through training of law enforcement officials, improving cross-agency coordination, and gender mainstreaming in legal education. As emphasized by Tuslian,¹⁷ the success of laws that favor gender justice can only be achieved if legal transformation goes hand in hand with changes in social and cultural values. Thus, the TPKS Law has become a strategic step in realizing the protection of human rights in Indonesia, although its effectiveness depends on the

¹⁶ Zenny Rezania Dewantary and Noraida Endut. "States Responsibility to Eradicate Violence Against Women Through the Due Diligence Framework in Human Rights: A Review of Protection and Punishment in the case of Indonesia." *Indonesian J. Int'l L.* 19 (2021): 567.

¹⁷ Widya Naseya Tuslian. "Equality before the law for women in Indonesia: An analysis of international law and its implementation at the national, regional, and sector level." In *Advancing Rule of Law in a Global Context*. Florida: CRC Press, (2020):219-227.

consistency of implementation and the commitment of all parties in upholding the principle of equality guaranteed by CEDAW.

3.2. Challenges and Urgency of the Implementation of the TPKS Law and CEDAW in Indonesia

The implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) and Law Number 7 of 1984 concerning the Ratification of CEDAW show important progress in realizing gender equality and the protection of human rights in Indonesia. These two regulations affirm the state's commitment to international legal norms as well as the basis for changing the paradigm of law and social policy. However, until now, its implementation still faces systemic, cultural, and institutional challenges that create a gap between progressive legal norms and the reality of their implementation, thus having an impact on the effectiveness of protection for victims of gender-based violence.¹⁸

The first challenge is the limited capacity of law enforcement officials in implementing the TPKS Law in accordance with human rights and CEDAW principles. Many officers in the police, prosecutor's office, and courts do not have a deep understanding of the victim-based approach. As a result, the legal process is often slow and insensitive to the psychological condition of the victim. In a number of cases, the authorities actually raised questions blaming the victim, giving rise to a

¹⁸ Yanuar Farida Wismayanti, Patrick O'Leary, Clare Tilbury, and Yenny Tjoe. "Child sexual abuse in Indonesia: A systematic review of literature, law and policy." *Child abuse & neglect* 95 (2019): 104034.

revival in the examination room.¹⁹ According to Maret,²⁰ this institutional unpreparedness causes victims to lose confidence in the legal system and opt for non-formal settlements.

The lack of gender-based training exacerbates this condition. Institutions such as Komnas Perempuan and the Ministry of PPPA have indeed developed training modules on victims' rights and gender equality, but their implementation has not been evenly distributed. Kasuma and Irianto²¹ emphasize the importance of comprehensive and continuous training to change the legal paradigm that is still legalistic and patriarchal. Without a change in mindset, the implementation of the TPKS Law risks stopping at the level of formality without meaningful social transformation.

The second challenge is the cultural barriers of patriarchy that are still deeply rooted in Indonesian society. A culture that places women as the guardians of family honor often makes victims of sexual violence choose to remain silent rather than report. The phenomenon of victim blaming still often appears, where the victim is blamed for the violence he experienced. This condition shows that the success of the law depends on social support that removes the stigma against the victim. Afni²²

¹⁹ Lauren Rumble, Ryan Fajar Febrianto, Melania Niken Larasati, Carolyn Hamilton, Ben Mathews, and Michael P. Dunne. "Childhood sexual violence in Indonesia: a systematic review." *Trauma, violence, & abuse* 21, no. 2 (2020): 284-299.

²⁰ Louna Maret. "Implementation of the CEDAW in France and Indonesia: Challenges and Progress regarding Women's Rights." *Indonesian J. Int'l L.* 21 (2023): 615.

²¹ Iva Kasuma and Sulistyowati Irianto. "CEDAW Convention and Engendering Faculty of Law's Curriculum Reinforcement: A Lesson Learnt from Indonesia." *Indonesian Journal of International Law* 20, no. 2 (2023): 1.

²² Wilda Aulia Maulida Afni. "Implementation of The CEDAW Convention on Sexual Violence Through the Congress of Indonesian Women Ulama." *AND FEMINISM (ICOGEF)* (2023): 53.

emphasized that cultural barriers like this are a major challenge in the implementation of CEDAW in Indonesia because gender-based discrimination is often legitimized by social values and conservative religious interpretations.

One real example is the case of sexual violence at one of the universities in Indonesia (2023). A female student reported her lecturer for alleged sexual harassment, but the legal process was slow and the victim faced social pressure to retract the report. Although the TPKS Law provides a strong legal basis, its implementation in the campus environment shows weak internal protection mechanisms and coordination with law enforcement.²³ This case illustrates the need for institutional courage and a change in social values for law enforcement to truly side with the victim.

In addition to social factors, there are institutional challenges in coordination between agencies. The handling of sexual violence involves many institutions such as the police, courts, social services, and health. However, coordination between institutions is often out of sync. Sidayang and Sumanta²⁴ noted that most institutions are still working sectorally without an integrated information system, so the recovery of victims is slow. As a result, the victim's right to substantive justice as guaranteed in CEDAW has not been fully realized.

Another problem is limited resources and funding. Many Regional Technical Implementation Units (*Unit Pelaksana Teknis Dinas*/UPTD) for the Protection of

²³ Ella Prihatini. "Explaining gender gaps in Indonesian legislative committees." *Parliamentary Affairs* 74, no. 1 (2021): 206-229.

²⁴ Stince Sidayang, Muhammad Julianto Sumanta, Candra Kirana Putri Calya, and Sabil Mokodenseho. "Addressing gender-based violence: Comparative analysis of international legal frameworks and practices." *The Easta Journal Law and Human Rights* 1, no. 03 (2023): 147-157.

Women and Children lack psychologists, legal counselors, and victim assistance personnel. Dewantary and Endut²⁵ emphasized that without adequate budget support and professional personnel, the mandate of the TPKS Law to provide integrated services for victims is difficult to realize. This shows the need for a national strategy that strengthens regional capacity in handling gender-based violence.

From these various obstacles, the urgency of implementing the TPKS Law and CEDAW is not only legal, but also includes the development of social awareness and cultural transformation. Normatively, this is related to the state's obligation to guarantee citizens' constitutional rights to protection and justice as stated in Articles 28G and 28H of the 1945 Constitution. Socially, this urgency concerns the establishment of an inclusive and victim-friendly legal system. Meanwhile, strategically, the implementation of these two laws is a manifestation of Indonesia's commitment to the principle of due diligence in international human rights law which requires the state to act actively in preventing and handling gender-based violence.²⁶

Kasuma and Irianto²⁷ emphasized that the successful implementation of these two regulations depends on the government's ability to build synergy between law,

²⁵ Zenny Rezania Dewantary and Noraida Endut. "States Responsibility to Eradicate Violence Against Women Through the Due Diligence Framework in Human Rights: A Review of Protection and Punishment in the case of Indonesia." *Indonesian J. Int'l L.* 19 (2021): 567.

²⁶ Widya Naseya Tuslian. "Equality before the law for women in Indonesia: An analysis of international law and its implementation at the national, regional, and sector level." In *Advancing Rule of Law in a Global Context*. Florida: CRC Press, (2020):219-227.

²⁷ Iva Kasuma and Sulistyowati Irianto. "CEDAW and Engendering Faculty of Law's Curriculum Reinforcement: A Lesson Learnt from Indonesia." *Indonesian J. Int'l L.* 20 (2022): 143.

education, and community culture. Without changes at the social level, the TPKS Law and CEDAW will only become legal texts without transformative power. Strengthening institutional capacity, improving legal literacy, and building a culture of gender equality are absolute prerequisites for the effectiveness of fair laws. Thus, until this year, the two main challenges in the implementation of the TPKS Law and CEDAW, namely weak law enforcement capacity and patriarchal cultural dominance, remain the main obstacles in realizing the protection of human rights and social justice with equal gender. Efforts to overcome these challenges are not only important for the protection of victims, but also for the development of a just, responsive, and humanitarian-minded legal system. True legal transformation can only be achieved if structural reform goes hand in hand with changes in society's social, cultural, and moral consciousness.

4. Conclusion

Based on the results of the analysis of the implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) and Law Number 7 of 1984 concerning the Ratification of CEDAW, it can be concluded that Indonesia has shown significant progress in strengthening the protection of human rights and gender equality. The TPKS Law is an important milestone in the reform of national law that is in favor of victims and adopts the values of substantive justice contained in CEDAW. However, the effectiveness of its implementation is still limited by various factors, especially the weak capacity of law enforcement officials,

lack of coordination between institutions, and patriarchal culture that is still dominant in the social structure of society.

The main challenge in the implementation of these two laws lies in the gap between progressive legal norms and conservative social realities. Laws often do not function optimally as a tool for social change, but are only limited to formal rules that have not touched the root of the problem of gender inequality. Therefore, future improvement efforts must be focused on institutional capacity building, gender-sensitive training for law enforcement officers, and the transformation of social values towards a more just and inclusive culture. With the synergy between legal reform and social change, Indonesia can realize a true, just, and responsive human rights protection system to the needs of victims of gender-based violence.

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