

Effectiveness of National Regulations in Protecting Sexual Violence Victims

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Abstract

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This study analyzes the effectiveness of national regulations in providing comprehensive protection for victims of sexual violence in the era of modern democracy. Through the normative juridical method, the study examined three main laws, namely the Law on the Crime of Sexual Violence, the Law on the Elimination of Domestic Violence, and the Child Protection Law, with a focus on the application of norms and the challenges of their implementation. The results of the study show that the existing legal framework has made significant progress through the expansion of the definition of sexual violence, the recognition of victims' rights, and the provision of recovery and restitution service mechanisms. However, the effectiveness of implementation is still influenced by various obstacles, such as regulatory disharmony, limited capacity of officials, lack of support services, and socio-cultural barriers that hinder reporting and access to justice. This study emphasizes the urgency of strengthening implementation through regulatory harmonization, institutional capacity building, and improvement of recovery services, so that the goal of victim protection can be achieved substantively. These findings contribute to the development of national policies that are more responsive to the needs of victims.

1. Introduction

The protection of victims of sexual violence is one of the most urgent agendas in legal development in the era of modern democracy. Social, technological developments, and changes in public interaction patterns show that forms of sexual violence are increasingly complex, not only in the form of physical violence or direct contact, but also include cyber-based violence, digital exploitation, coercion, and manipulation through electronic media. In this context, the existence of an effective legal framework is the main foundation to ensure that the state is able to carry out its constitutional obligations in providing a sense of security and protection for citizens, especially those in vulnerable positions.¹ National legislation such as Law Number 12 of 2022 concerning the Crime of Sexual Violence (*Undang-Undang Tindak Pidana Kekerasan/TPKS Law*), Law Number 23 of 2004 concerning the Elimination of Domestic Violence (*Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga/PKDRT Law*), and the Child Protection Law, play an important role in these efforts because they provide a basis for rules that affirm state recognition of various forms of sexual violence and the rights of victims.

Academic studies in the last five-year period show that prior to the introduction of the TPKS Law, protection for victims of sexual violence was often not optimal because many cases were not fully accommodated in existing criminal provisions, especially when it comes to non-physical violence and technology-based

¹ Komnas Perempuan. "Korban Bersuara, Data Berbicara, Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara. Catatan Kekerasan Terhadap Perempuan Tahun 2018." Jakarta: Komisi Nasional Anti Kekerasan terhadap Perempuan, March 11, 2019. Retrieved November 15, 2022 from <https://share.google/82C71N0zcvIzkMe05>

sexual crimes.² These conditions indicate the urgent need for special regulations that not only regulate the types of criminal acts, but also ensure recovery services, witness protection, psychosocial assistance, restitution mechanisms, and trauma-sensitive examination procedures.³ As such, the TPKS Law is seen as an important achievement that fills a gap in previous regulations while also setting a new standard for how the state should respond to sexual violence as a whole.

However, the effectiveness of legislation can be measured not only by the normative quality of the legislation, but also by the extent to which it can be applied consistently in law enforcement practice. Research shows that obstacles to implementation often come from limited resources, lack of understanding of the authorities regarding the victim's perspective, differences in handling standards between institutions, and the existence of a patriarchal culture that still affects the courage of victims to report.⁴ In addition, the harmonization between the TPKS Law and the PKDRT Law and the Child Protection Law is also an important issue to ensure that there is no overlap of authority or procedural confusion in handling cases.⁵

The development of modern democracy also has implications for increasing public awareness of human rights, transparency, and state accountability. However,

² Ghina Nabilah, Atika Nur Rahmah Utama, Irene Maria Angela, and Nabila Nariswari. "Perlindungan Hukum Bagi Korban Kekerasan Seksual: Upaya Pemulihan dan Hak Privasi Korban Kekerasan Seksual di Era Disrupsi Digital." *Padjadjaran Law Review* 10, no. 1 (2022): 79-96.

³ Koko Wahyu Pratama, Didit Darmawan, and Rio Saputra. "Legal Protection for Victims of Sexual Violence in the Perspective of Indonesian Criminal Law." *Bulletin of Science, Technology and Society* 1, no. 3 (2022): 25-29.

⁴ Eko Nurisman. "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022." *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170-196.

⁵ Annie Myranika. "Legal Protection for Child Victims of Sexual Violence Crimes." *International Journal of Social Sciences* 5, no. 1 (2022): 37-44.

these conditions are not always linear with increasing the effectiveness of law enforcement. National reports show that although the reporting rate is increasing from year to year, this is not always followed by an increase in case resolution, which instead shows a gap between norms and practices.⁶ Socio-legal research confirms that victim protection can only be considered effective if there is a guarantee of access to justice, ease of reporting, adequate assistance services, and a law enforcement process that does not cause victimization.⁷

Various literature in the last five years has also highlighted the challenges of implementing the TPKS Law in the early years of its enactment, including the need to adjust technical guidelines, align with institutional rules, train apparatus, and provide more equitable recovery services.⁸ Nevertheless, the urgency of strengthening the implementation of the law remains an important part of the national agenda, considering that the impact of sexual violence is not only physical and psychological but also socio-economic, which often hinders victims from continuing their lives with dignity.⁹

⁶ Komnas Perempuan. "Korban Bersuara, Data Berbicara, Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara. Catatan Kekerasan Terhadap Perempuan Tahun 2018." Jakarta: Komisi Nasional Anti Kekerasan terhadap Perempuan, March 11, 2019. Retrieved November 15, 2022 from <https://share.google/82C71N0zcvIzkMe05>

⁷ Jakartafeminist. "Situasi Kekerasan Berbasis Gender di Indonesia selama Pandemi COVID-19." Jakartafeminist, November 16, 2021. Retrieved in October 25, 2022 from <https://share.google/TQSzURAhSojAq3sQn>

⁸ Arsa Ilmi Budiarti, Marsha Maharani, Maria Tarigan, Bestha Inatsan Ashila, Dio Ashar Wicaksana, Adery Ardhan Saputro. Refleksi Penanganan Kekerasan Seksual di Indonesia. *Indonesia Judicial Research Society*, (2022): 1-149. <https://share.google/ltien6UFgMTpbJOI2>

⁹ Fachria Octaviani and Nunung Nurwati. "Analisis faktor dan dampak kekerasan seksual pada anak." *Jurnal Ilmu Kesejahteraan Sosial HUMANITAS* 3, no. 2 (2021): 56-60.

Taking into account these various dynamics, this study seeks to examine the effectiveness and challenges of implementing relevant national regulations in providing substantial protection for victims of sexual violence. This study focuses on two main areas of analysis, namely how the implementation and effectiveness of national regulations are able to realize comprehensive protection for victims, as well as what obstacles arise in the process of their implementation and how urgent it is to strengthen its implementation in the context of modern democracy. This focus is needed in order for research to identify the extent to which established legal norms can actually function in practice, while understanding the urgent need to strengthen their implementation mechanisms to ensure that the goal of victim protection can be optimally realized.

2. Methods

This research uses a normative juridical method, which is an approach that places law as a normative rule that is studied through analysis of laws and regulations, legal documents, legal principles, and relevant academic literature. In the context of the study of the effectiveness of national regulations in the protection of victims of sexual violence, this method was chosen because it allows the study to systematically examine the structure of norms and evaluate the extent to which the applicable legal provisions provide an adequate basis for the protection of victims' rights. The normative juridical method also provides space to explore the relationship between the main laws that play a role in this issue, such as the Sexual Violence Crime Law, the Domestic Violence Elimination Law, and the

Child Protection Law, as well as analyze the alignment, overlap, or emptiness of norms in them.

The research procedure begins by identifying all relevant regulations, including implementing rules, sectoral policies, and institutional technical guidelines related to the handling of victims of sexual violence. Each of these regulations is analyzed through systematic interpretation, namely by understanding the location and function of each norm in the overall criminal law system and victim protection system. The interpretation is carried out by taking into account the purpose of the formation of the law, the general principles of victim protection, and the legal standards that apply in the context of modern democracy. The next analysis was carried out by comparing the substance of the regulation with the findings of academic research and independent agency reports describing the conditions of implementation in the field. Although this study is normative, the secondary data is used to connect legal norms with the reality of practice so that the extent to which the effectiveness of regulations can be identified.

In addition to substantive normative analysis, this study also uses a conceptual approach, which examines legal concepts related to victim protection, such as recovery, restitution, mentoring, enforcement of trauma-based procedures, and access to justice. This approach is used to ensure that the interpretation of the content of the statute is carried out taking into account doctrinal developments and the practical needs of victims in the contemporary legal system. To corroborate the results of the analysis, the study also conducted an analysis of certain relevant court decisions as a form of illustration of how norms are applied, but without focusing

on one specific case so that it remains in accordance with the character of the normative study.

The overall result of this normative juridical method is a clear mapping of the strengths and weaknesses of regulations in providing protection to victims of sexual violence. Using this method, the research can demonstrate not only the adequacy of norms, but also the need for harmonization and evaluation of implementation without proposing a reconstruction of the law, thus remaining within the limits of pure normative analysis that assesses the effectiveness and challenges of regulatory implementation.

3. Results and Discussion

3.1. Application and Effectiveness of the Law

The implementation of national regulations regulating the crime of sexual violence has shown significant normative progress since the emergence of a special law in 2022, but the transformation of norms into real protection for victims still faces real obstacles. Substantively, Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) expands the scope of the definition of sexual violence to include non-physical acts and technology-based acts and mandates the victim's right to recovery, restitution, and protection services during the judicial process.¹⁰ Formal recognition of the various dimensions of violence is a crucial step

¹⁰ Koko Wahyu Pratama, Dudit Darmawan, and Rio Saputra. "Legal Protection for Victims of Sexual Violence in the Perspective of Indonesian Criminal Law." *Bulletin of Science, Technology and Society* 1, no. 3 (2022): 25-29.

because it overcomes legal loopholes that have made many cases ineffective within the framework of the traditional Criminal Code.¹¹

In terms of mechanisms, the presence of restitution and recovery service provisions in the TPKS Law marks a paradigmatic shift from an approach that focuses solely on punishing perpetrators to a more holistic approach to victims' rights. However, evidence from empirical studies and institutional reports shows that the availability of articles in legal texts has not automatically translated into real services in the field; The availability of psychosocial services, forensic health services, and restitution payment mechanisms is still uneven and depends on regional capacity and budget allocation.¹² Thus, the effectiveness of the law must be measured not only from the existence of the article, but also from the continuity of access to services mandated by the norm.¹³

Juridical analysis also shows that harmonization between legal instruments is a determining factor for the effectiveness of the implementation. The TPKS Law needs to be synchronized with Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) and the Child Protection Law (as an amendment from Law No. 23/2002 to Law No. 35/2014) to avoid overlapping regulations and

¹¹ Ghina Nabilah, Atika Nur Rahmah Utama, Irene Maria Angela, and Nabila Nariswari. "Perlindungan Hukum Bagi Korban Kekerasan Seksual: Upaya Pemulihan dan Hak Privasi Korban Kekerasan Seksual di Era Disrupsi Digital." *Padjadjaran Law Review* 10, no. 1 (2022): 79-96.

¹² Arsa Ilmi Budiarti, Marsha Maharani, Maria Tarigan, Bestha Inatsan Ashila, Dio Ashar Wicaksana, Adery Ardhan Saputro. Refleksi Penanganan Kekerasan Seksual di Indonesia. *Indonesia Judicial Research Society*, (2022): 1-149. <https://share.google/ltien6UFgMTpbJOI2>

¹³ Komnas Perempuan. "Korban Bersuara, Data Berbicara, Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara. Catatan Kekerasan Terhadap Perempuan Tahun 2018." Jakarta: Komisi Nasional Anti Kekerasan terhadap Perempuan, March 11, 2019. Retrieved November 15, 2022 from <https://share.google/82C71N0zcvIzkMe05>

confusion of institutional authority. This procedural ambiguity can cause delays in handling cases and burden victims with a long process and are not sensitive to trauma.¹⁴ Practice in the field shows that law enforcement officials have not evenly applied the principle of a victim-centered approach, so that the investigation and litigation process sometimes exacerbates the psychological burden of victims.¹⁵

In addition, the aspect of proving and handling evidence, especially in cases involving electronic evidence, requires uneven technical capacity at the police and prosecutor's office levels. Case studies and comparative studies note that without clear digital forensic guidelines and evidence preservation procedures, digital platform-based cases are at risk of stalling at the investigation stage.¹⁶ This affects the rate of case resolution and in turn lowers public perception of the effectiveness of the legal system.

However, some early implementation experiences show positive potential when there is coordination between institutions and funding commitments. In places with integrated services (one-stop service) and adequate training of the apparatus, victims reported better access to medical services and psychological support as well as more sensitive procedures.¹⁷ This indicates that the TPKS Law can be effective if

¹⁴ 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.

¹⁵ Jakartafeminist. "Situasi Kekerasan Berbasis Gender di Indonesia selama Pandemi COVID-19." Jakartafeminist, November 16, 2021. Retrieved in October 25, 2022 from <https://share.google/TQSzURAhSojAq3sQn>

¹⁶ Anisa Munasaroh. "Problematika kekerasan berbasis Gender dan Pencapaian Gender equality dalam Sustainable development Goals di indonesia." *IJouGS: Indonesian Journal of Gender Studies* 3, no. 1 (2022): 1-20.

¹⁷ Eko Nurisman. "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022." *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170-196.

it is followed by implementing policies, technical guidelines, budget support, and capacity-building programs.

The findings suggest that from a normative juridical perspective, regulations now provide a more comprehensive legal basis for victim protection, but their effectiveness is highly dependent on regulatory harmonization, institutional capacity, availability of recovery services, and evidence-handling procedures. In other words, normative progress opens up opportunities for substantive protection, but the realization of these benefits requires an implementable policy package that combines legal, technical, and administrative aspects.

3.2. Challenges of Implementing the Law and Its Urgency

Of the several obstacles that have emerged in the implementation of regulations for the protection of victims of sexual violence, the three main challenges that continue to recur are: (1) disharmony between legal instruments (normative harmonization), (2) limited institutional capacity and weak implementation of victim-centered & trauma-informed approaches, and (3) handling of electronic evidence as well as limitations of restitution mechanisms and recovery services. Each of these challenges is not only conceptual but produces practical implications that directly affect victims' access to justice and restoration.

First, the disharmony of legal norms is a major structural challenge. Law Number 12 of 2022 concerning the Crime of Sexual Violence introduces new concepts and mechanisms for example, restitution and recovery services, which at the level of legal text are important to fill the gaps in previous regulations. However, in practice, law enforcement officials often face confusion about whether an action

should be processed based on the TPKS Law, the Criminal Code, the Criminal Code, Domestic Violence Law, or the Child Protection Law, especially in cases involving domestic elements or child victims. As a result, the process of determining articles used for investigation and prosecution can take a long time because it needs to clarify authority, so that victims experience delays in access to legal protection and support services.¹⁸ Concrete example: in cases of non-physical violence that occurs in the household with a child victim, the investigator sometimes delays processing while asking for an expert assessment or guidance from the prosecutor's office regarding which law is more appropriate, so the victim must wait for an urgent referral for medical or psychosocial services. Ambiguity like this not only increases the administrative burden but also increases the risk of victimization because victims feel that the process is convoluted and insensitive to their needs.¹⁹

Second, the limited institutional capacity and the weak implementation of the victim-oriented approach are very concrete obstacles. Police officers, prosecutors, medical personnel, and social workers in many areas have not received adequate training on victim-friendly interview techniques, sexual forensic procedures, or trauma-informed care principles; This results in examination practices that sometimes cause retraumatization, for example, invasive questions in front of many people, delays in forensic medical examinations, or a lack of safe spaces for child examinations which ultimately make the victim reluctant to continue legal

¹⁸ Koko Wahyu Pratama, Didit Darmawan, and Rio Saputra. "Legal Protection for Victims of Sexual Violence in the Perspective of Indonesian Criminal Law." *Bulletin of Science, Technology and Society* 1, no. 3 (2022): 25-29.

¹⁹ Annie Myranika. "Legal Protection for Child Victims of Sexual Violence Crimes." *International Journal of Social Sciences* 5, no. 1 (2022): 37-44.

proceedings.²⁰ An example of this is when a victim tries to report but has to go through a lengthy administrative process at a police station that does not have a private space, so that he is forced to repeat his traumatic story in front of an untrained officer, or when there is no accompanying officer so that the victim feels alone in facing the legal process. Capacity gaps are also seen in the distribution of services: large urban areas may have Integrated Service Units and safe houses, while rural areas have no such facilities at all, so recovery access is highly uneven.²¹

Third, technical challenges are related to the handling of electronic evidence and the realization of restitution mechanisms and recovery services. Sexual violence that leverages digital platforms leaves vulnerable electronic traces lost if not immediately identified and secured; however, digital forensic capabilities in the police and prosecutor's offices have not been evenly distributed, and it is not uncommon for investigations to be stopped because evidence has been deleted or there is no procedure to request the cooperation of platform providers.²² In addition, the TPKS Law that mandates restitution for victims requires a clear administrative flow and funding source so that compensation payments are not only normative promises. In practice, the absence of special funds, the slow process of restitution claims, and the lack of a compensation management unit have caused many victims

²⁰ Arsa Ilmi Budiarti, Marsha Maharani, Maria Tarigan, Bestha Inatsan Ashila, Dio Ashar Wicaksana, Adery Ardhan Saputro. Refleksi Penanganan Kekerasan Seksual di Indonesia. *Indonesia Judicial Research Society*, (2022): 1-149. <https://share.google/ltien6UFgMTpbJOI2>

²¹ 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.

²² Ghina Nabilah, Atika Nur Rahmah Utama, Irene Maria Angela, and Nabila Nariswari. "Perlindungan Hukum Bagi Korban Kekerasan Seksual: Upaya Pemulihan dan Hak Privasi Korban Kekerasan Seksual di Era Disrupsi Digital." *Padjadjaran Law Review* 10, no. 1 (2022): 79-96.

to not receive proper compensation, for example: victims who have to bear the costs of health care or psychological therapy themselves because the restitution mechanism has not been operationalized at the regional level.²³ This lack of resources has implications for the state's failure to fulfill its promise for comprehensive recovery, so that victims continue to bear the socio-economic burden after the incident.²⁴

The urgency of overcoming these three main challenges is very high and interdependent: without normative harmonization, the authorities will continue to be confused about determining the correct legal route; Without institutional capacity building and the implementation of a victim-oriented approach, the legal process will continue to cause retraumatization and inhibit reporting; And without technical protocols and the allocation of funds for restitution and recovery services, the normative provisions in the law remain mere symbols. Therefore, policy priorities should be oriented towards synchronous measures: drafting implementing guidelines that harmonize relevant legislation and provide clear procedural directions; major investments in ongoing training and the establishment of integrated service units across the region; as well as the establishment of a digital forensic mechanism and restitution funds that can be accessed quickly by victims. These interventions must be implemented simultaneously so as not to be interdependent, only then can

²³ Eko Nurisman. "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022." *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170-196.

²⁴ Komnas Perempuan. "Korban Bersuara, Data Berbicara, Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara. Catatan Kekerasan Terhadap Perempuan Tahun 2018." Jakarta: Komisi Nasional Anti Kekerasan terhadap Perempuan, March 11, 2019. Retrieved November 15, 2022 from <https://share.google/82C71N0zcvIzkMe05>

progressive legislation be translated into real protections that guarantee justice and redress for victims of sexual violence in the context of modern democracy.

4. Conclusion

This study examines the effectiveness of national regulations in providing substantial protection for victims of sexual violence in the context of modern democracy. Using normative juridical methods, this study analyzes the three main legal instruments of the TPKS Law, the Domestic Violence Law and the Child Protection Law and how these norms are applied in practice. The results of the study show that although regulations have undergone significant development through the recognition of victims' rights, remedial mechanisms, and the expansion of the definition of sexual violence, their implementation is still hampered by three main challenges. The first challenge is the disharmony between legal instruments that causes procedural confusion. The second challenge relates to the limitations of institutional capacity, including the lack of implementation of victim-oriented and trauma-based approaches. The third challenge is technical barriers, especially in the handling of electronic evidence, restitution mechanisms, and the provision of adequate recovery services. This study emphasizes the urgency of strengthening implementation through harmonization of regulations, increasing the capacity of the apparatus, and improving technical support so that protection for victims can be realized effectively and fairly.

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