
LEGAL PROTECTION FOR VICTIMS OF SEXUAL VIOLENCE IN THE PERSPECTIVE OF THE 2022 TPKS LAW

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Abstract

Sexual violence is a human rights violation that has a wide impact on victims, both physically, psychologically, socially, and economically. In Indonesia, efforts to provide legal protection for victims of sexual violence have progressed with the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This law aims to provide more comprehensive protection through a victim-centered approach, by accommodating the rights of victims at every stage of the legal process including investigations, trials, and post-incident recovery. In addition, the TPKS Law also regulates mechanism of restitution and compensation for victims and introduces stricter legal instruments handling cases of sexual violence.

However, despite having a strong legal basis, the implementation of the TPKS Law in Indonesia still faces various obstacles. Lack of understanding by law enforcement officers, weak coordination between institutions, and social stigma against victims are the main challenges in implementing this regulation. Many victims still experience re-victimization in the legal process, both in the form of investigations that corner the victim and minimal legal and psychosocial assistance. In addition, access to recovery services for victims is still limited, especially in remote areas, which causes many victims to not receive adequate protection.

This study aims to analyze the effectiveness of the TPKS Law in providing legal protection for victims of sexual violence and to identify obstacles in its implementation. Through the normative legal method with the statute approach, conceptual approach, and case approach, this study evaluates the extent to which the regulation can be applied in judicial practice in Indonesia. With the strengthening of the capacity of law enforcement officers, increased socialization to the community, and improvements in the victim protection system, it is hoped that the implementation of the TPKS Law can run more effectively ensuring that the rights of victims of sexual violence are truly protected.

Keywords : *Legal Protection, Sexual Violence, TPKS Law, Victims' Rights*

INTRODUCTION

Sexual violence is a form of human rights violation that continues to be a serious concern in the legal system in Indonesia. This crime not only impacts the physical and psychological aspects of the victim, but also has broad legal, social, and economic implications. In recent decades, the increase in cases of sexual violence in various regions in Indonesia shows a gap between legal policies and the reality of victim protection, both in terms of prevention, case handling, and victim recovery.

Before the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS), the Indonesian legal system faced many obstacles in providing comprehensive protection to victims of sexual violence. Previous regulations, such as the Criminal Code (KUHP), the Child Protection Law (Law No. 35 of 2014), and the Law on the Elimination of Domestic Violence (Law No. 23 of 2004), were considered insufficient to accommodate various forms of sexual violence and

victims' rights in the legal process. The Criminal Code, for example, is still limited in regulating the definition of sexual violence and tends to be more oriented towards punishing the perpetrator without paying special attention to the victim's recovery.

The imperfections in the previous legal system were one of the main factors that led to the birth of the 2022 TPKS Law. This law was drafted with a more victim-centered approach, where the rights of victims receive primary attention at every stage of the legal process. The TPKS Law not only regulates the definition and types of sexual violence crimes more broadly, but also provides guarantees of legal protection, recovery services, and more systematic and effective prevention mechanisms.

However, the implementation of the TPKS Law in practice still faces various obstacles, especially in terms of law enforcement, coordination between institutions, and the fulfillment of victims' rights in real terms. Many victims of sexual violence still experience re-victimization, both in the investigation, trial, and recovery stages. In addition, there is still a gap in the understanding of law enforcement officers regarding the victim-based approach, which results in resistance in optimally applying the provisions of the TPKS Law.

Based on this background, this study aims to analyze the effectiveness of legal protection for victims of sexual violence from the perspective of the 2022 TPKS Law. The focus of this study includes legal regulations governing victim protection, implementation of norms in judicial practice, and challenges faced in implementing the TPKS Law in the field.

METHODS

This research uses a normative legal method with a statute approach, conceptual approach, and case approach.

- The statute approach is carried out by analyzing the TPKS Law and other related regulations.
- The conceptual approach is used to explore legal theories related to the protection of victims of sexual violence.
- The case approach is carried out by analyzing cases of sexual violence that have been decided by the court as material for evaluating the implementation of the law.

The research data was obtained through literature study by reviewing various legal documents, scientific journals, court decisions, and reports from women and children protection institutions. Data analysis was conducted descriptively-analytically by comparing legal theory, regulations, and implementation practices in the field.

RESULTS AND DISCUSSION

1. Legal Protection for Victims of Sexual Violence Based on the 2022 TPKS Law

Sexual violence is a crime that not only impacts the individual victim but also has broad social and legal consequences. In the Indonesian legal system, efforts to protect victims of sexual violence have experienced quite significant developments, especially with the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This regulation was born as a

form of improvement and strengthening of the law which was previously partial and did not provide comprehensive protection for victims. Before the TPKS Law, provisions related to sexual violence were spread across various regulations, such as the Criminal Code, the Child Protection Law, the Domestic Violence Law, and the Law on the Eradication of Criminal Acts of Human Trafficking.

The TPKS Law regulates the protection of victims of sexual violence more broadly with a victim-centered approach, where the rights of victims are accommodated starting from the prevention stage, case handling, to recovery after the crime occurs. This is based on the main principles stated in Article 2 of the TPKS Law, namely non-discrimination, the best interests of victims, justice, benefits, respect for human rights, and gender equality. This principle is the foundation for providing more humane legal protection for victims of sexual violence.

In general, protection of victims of sexual violence in the TPKS Law is divided into several aspects, namely:

1. Legal protection for victims in the justice system
2. Provision of recovery services for victims
3. Compensation and restitution
4. Protection of witnesses and victims in legal processes

Each of these aspects has a strong legal basis and aims to avoid re-victimization of victims in the legal process. Before the TPKS Law was enacted, many victims of sexual violence experienced additional trauma due to judicial mechanisms that were not on their side, for example in the form of questions that cornered victims during examinations, lack of protection from intimidation by perpetrators, and difficulty in obtaining psychosocial and medical recovery services.

The TPKS Law provides legal protection for victims from the investigation stage to the post-trial stage. This aims to ensure that victims' rights remain protected throughout the legal process.

During the investigation and inquiry stage, victims often have difficulty reporting cases of sexual violence that they have experienced. Some victims face intimidation from the perpetrators, minimal legal assistance, and social stigma that makes them reluctant to report the crime. Article 25 of the TPKS Law states that victims have the right to:

1. Legal assistance from the start of the examination
2. Medical and psychosocial services before, during and after the legal process
3. Protection from threats or pressure from perpetrators or other parties
4. Examination using victim-friendly methods, including not having to confront the perpetrator directly

This provision is a form of improvement from the previous regulation which still viewed victims as objects in the justice system, not as parties who need to be protected. In practice, many cases of sexual violence experience obstacles because victims do not receive sufficient assistance, so they experience psychological pressure in providing information. With this new mechanism, it is hoped that more victims will dare to report and get justice.

At the trial stage, the TPKS Law also provides a guarantee that victims will receive fair treatment and be free from intimidation. Article 26 of the TPKS Law states that victims have the right to:

1. Psychological and social support during the trial
2. Protection of victim identity, including a ban on disclosing identity in the media
3. Examination that takes into account the victim's psychological condition

In addition, the court can use a closed trial mechanism to protect the privacy of the victim. This is important considering that many victims of sexual violence experience trauma due to excessive exposure in the media. Many cases show that victims often experience social pressure due to their identities being exposed during the legal process.

In addition to punishment for the perpetrator, the TPKS Law also regulates the rights of victims to receive compensation, damages, and restitution which are the responsibility of the perpetrator. In Article 31 of the TPKS Law, it is explained that victims have the right to file for restitution which includes:

1. Cost of medical and psychological care
2. Economic losses due to sexual violence
3. Other costs arising from the impact of crime

If the perpetrator is unable to pay restitution, the state can provide compensation through the Witness and Victim Protection Agency (LPSK). This mechanism is one of the innovations in the Indonesian legal system that aims to provide real recovery for victims, not just punish the perpetrator.

Although the TPKS Law has regulated victim protection in a more comprehensive manner, there are still various obstacles in its implementation, including:

- a. Lack of Understanding of Law Enforcement Officers
One of the main challenges in implementing the TPKS Law is the lack of understanding of law enforcement officers regarding the victim-based approach. Many cases show that police officers, prosecutors, and judges still use a perspective that is not in favor of victims, so that the legal process often leads to re-victimization.
- b. Social Stigma Against Victims
Society still has a view that often blames victims in cases of sexual violence. This causes many victims to be reluctant to report the crimes they experience, for fear of facing social pressure and negative stigma.
- c. Lack of Access to Support Services
In many areas, facilities for victim assistance are still limited. Psychological services, legal aid, and safe houses for victims of sexual violence are still uneven, so many victims do not receive adequate protection.

To increase the effectiveness of victim protection in the implementation of the TPKS Law, several strategic steps that can be taken are:

1. Improving the capacity of law enforcement officers in handling cases of sexual violence from a victim-based perspective.
2. Expanding access to legal, psychosocial and rehabilitation aid services for victims throughout Indonesia.
3. Encourage active community participation in supporting victims, including through public education about sexual violence and victims' rights.

4. Develop technical policies that clarify the mechanisms for providing restitution and compensation to victims, so that victims' rights can be fulfilled to the maximum.

With these steps, it is hoped that legal protection for victims of sexual violence can be realized in a real and effective manner, so that justice can truly be given to those who are victims of sexual violence in Indonesia.

2. Implementation of Legal Protection for Victims of Sexual Violence in Practice

The implementation of legal protection for victims of sexual violence in the criminal justice system in Indonesia has undergone various developments after the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This regulation provides more comprehensive protection by accommodating the rights of victims in various stages of the legal process. However, in its implementation, there are still many challenges that need to be overcome so that the protection that has been guaranteed normatively can be implemented effectively in the field.

In judicial practice, cases of sexual violence are often faced with systemic obstacles that hinder the investigation and prosecution process. One of the main obstacles is the ongoing resistance among law enforcement officers in implementing the principle of a victim-centered approach as mandated in the TPKS Law. Many police investigators, prosecutors, and judges still use conventional approaches that do not side with the victim. In some cases, victims are actually asked questions that corner them, as if they were responsible for the acts of sexual violence they experienced. This is certainly contrary to the spirit of the TPKS Law which emphasizes the importance of assistance for victims and protection from actions that can lead to re-victimization.

In addition, the lack of understanding of law enforcement officers regarding the forms of sexual violence regulated in the TPKS Law is also an obstacle in itself. Before the enactment of this law, the definition of sexual violence in Indonesian criminal law was very limited, where the Criminal Code only recognized rape and molestation as sexual crimes. Meanwhile, the TPKS Law has expanded the scope of sexual violence crimes, including sexual exploitation, forced marriage, sexual slavery, and online gender-based violence. In many cases, law enforcement officers still adhere to the old, narrower definition, so that many cases of sexual violence are difficult to process legally due to a lack of understanding regarding the new forms of sexual violence that have been recognized in the TPKS Law.

Another obstacle that often arises in the implementation of legal protection for victims of sexual violence is the weak coordination between institutions responsible for handling cases of sexual violence. In the Indonesian justice system, there are various institutions that play a role in protecting victims, starting from the police, prosecutors, courts, the Witness and Victim Protection Agency (LPSK), and various service institutions such as the Integrated Service Center for the Empowerment of Women and Children (P2TP2A). Although the TPKS Law has mandated the need for better coordination between these institutions, in practice there are still many cases where victims do not receive optimal protection due to poor coordination. For example, in several cases, victims have difficulty accessing psychological services because there is no clear mechanism between police investigators and rehabilitation services for victims. This causes many victims to end up having to face the legal process without adequate psychosocial support, which ultimately impacts the quality of victim testimony in court.

In addition, although the TPKS Law has regulated the restitution and compensation mechanism for victims, the implementation of this policy still faces many challenges. One of the main problems

is the difficulty of the process of executing court decisions related to restitution payments by perpetrators to victims. In many cases, perpetrators do not have the financial ability to pay restitution, so the victim's right to receive compensation is often not fulfilled. The law does provide an option that the state can provide compensation to victims through a mechanism managed by LPSK, but in practice this policy has not been implemented optimally. Many victims are not aware of this compensation mechanism, while for those who are aware of it, complicated administrative procedures are an obstacle in accessing these rights.

Legal protection for victims of sexual violence is also often hampered by the patriarchal culture that is still strong in society. Many cases of sexual violence are not reported because victims are afraid of social stigma and pressure from their surroundings. In some cases, the victim's family actually suggests that the case be resolved amicably rather than through legal channels. In fact, the TPKS Law has expressly prohibited efforts to resolve cases of sexual violence outside of legal mechanisms. However, in reality, there are still many cases that do not reach the trial stage because of pressure from various parties for victims to withdraw their reports. This shows that although legal protection has been strengthened normatively, broader education and socialization efforts are still needed so that the public has a better understanding of the rights of victims of sexual violence.

Another problem in the implementation of legal protection for victims is the limited facilities available to victims, especially for those in remote areas. Many areas still do not have safe houses or rehabilitation centers that can provide protection for victims who need temporary housing. In some cases, victims who want to seek protection actually experience difficulties due to limited access to social and legal services. This is a major challenge for the government in ensuring that protection for victims of sexual violence can be applied evenly throughout Indonesia.

Law enforcement efforts in cases of sexual violence also face challenges in terms of evidence in court. In many cases, victims often do not have enough physical evidence to support their reports. This is due to various factors, such as delays in conducting a visum et repertum or the loss of evidence due to pressure faced by victims after the sexual violence incident occurred. The TPKS Law has indeed regulated that evidence in cases of sexual violence is not only limited to a visum or eyewitnesses, but can also include digital evidence and recordings of the victim's statements. However, in practice, judges still often adhere to conventional evidence, which causes many cases of sexual violence to end in acquittals due to the lack of sufficient evidence.

From the various obstacles that have been described above, it can be concluded that although the TPKS Law has provided a stronger legal basis to protect victims of sexual violence, the implementation of this regulation still faces many challenges in practice. Further efforts are needed to strengthen the criminal justice system to be more responsive to the needs of victims, including through increasing the capacity of law enforcement officers, improving the coordination system between institutions, and providing better supporting facilities for victims. In addition, education for the community must also be strengthened so that the stigma against victims of sexual violence can be eliminated, so that more victims dare to report their cases and get the justice they deserve.

The success of implementing legal protection for victims of sexual violence depends not only on the existence of strong regulations, but also on the extent to which these regulations can be implemented effectively in the field. With improvements in the various aspects mentioned, it is hoped that the Indonesian legal system can be more on the side of victims of sexual violence and ensure that their rights are truly protected at every stage of the legal process.

CONCLUSION

Legal protection for victims of sexual violence in Indonesia has made significant progress with the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This regulation is presented as a solution to the limitations of previous laws that have not provided comprehensive protection for victims. The TPKS Law adopts a victim-centered approach that ensures that victims' rights are protected at every stage of the legal process, from investigation to post-incident recovery. In addition, this law also emphasizes the need for psychosocial recovery, compensation for victims, and prevention and education mechanisms to reduce the number of sexual violence cases. Thus, normatively, the TPKS Law has become an important milestone in legal reform related to the protection of victims of sexual violence in Indonesia.

However, despite having a strong legal basis, the implementation of the TPKS Law in the field still faces various obstacles. Lack of understanding by law enforcement officers, social stigma against victims, weak coordination between institutions, and limited supporting facilities for victims are the main challenges in realizing effective protection. In addition, obstacles in the aspects of proof and execution of restitution for victims are also still problems that need to be addressed immediately. Therefore, greater efforts are needed in the form of strengthening the capacity of law enforcement officers, increasing education for the community, and providing broader and more easily accessible services for victims. With improvements in implementation, it is hoped that justice for victims of sexual violence can truly be realized, and the legal system in Indonesia can be more effective in protecting their rights.

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