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Legal Protection and Substantive Justice under Indonesia's TPKS Law

Perlindungan Hukum dan Keadilan Substantif dalam Undang-Undang TPKS di Indonesia

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Abstract

This study examines the implementation of Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law) in strengthening legal protection and achieving substantive justice for victims of sexual harassment in Indonesia. Using a normative legal method with statutory, conceptual, and case approaches, the research analyzes reforms in substantive and procedural criminal law. The findings reveal that the TPKS Law expands the scope of sexual harassment offenses, introduces a more flexible evidentiary standard centered on victim testimony, and institutionalizes restitution as a mandatory right supported by the Victim Trust Fund. These reforms signify a shift toward a victim-centered and restorative justice paradigm. However, their effectiveness remains constrained by legal harmonization issues, limited institutional capacity, and persistent socio-cultural barriers, including power imbalances and victim-blaming. Strengthening regulatory frameworks, inter-agency coordination, and law enforcement capacity is essential to ensure the realization of substantive justice and comprehensive victim protection.

Keywords: Sexual Harassment; Legal Protection; Substantive Justice; TPKS Law; Victim Rights

Abstrak

Penelitian ini mengkaji implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (UU TPKS) dalam memperkuat perlindungan hukum dan mewujudkan keadilan substantif bagi korban pelecehan seksual di Indonesia. Metode yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Hasil penelitian menunjukkan bahwa UU TPKS memperluas cakupan delik pelecehan seksual, menghadirkan standar pembuktian yang lebih fleksibel berbasis keterangan korban, serta melembagakan hak restitusi yang bersifat wajib melalui Dana Bantuan Korban. Reformasi ini mencerminkan pergeseran menuju paradigma keadilan restoratif yang berorientasi pada korban. Namun, efektivitasnya masih terhambat oleh disharmonisasi regulasi, keterbatasan kapasitas kelembagaan, serta hambatan sosial-budaya seperti ketimpangan relasi kuasa dan stigma terhadap korban. Penguatan regulasi, koordinasi antar lembaga, dan kapasitas aparat penegak hukum menjadi kunci dalam mewujudkan keadilan substantif dan perlindungan korban secara optimal.

Kata Kunci: Pelecehan Seksual; Perlindungan Hukum; Keadilan Substantif; UU TPKS; Hak Korban



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INTRODUCTION

Sexual violence and harassment have become urgent global humanitarian concerns due to their profound impact on physical and psychological integrity as well as human dignity.¹ In Indonesia, the prevalence of sexual harassment is increasing, with national data indicating that tens of thousands of women and children are victimized annually. This issue has shifted from being perceived as a mere moral offense to a significant threat to constitutionally guaranteed human rights, particularly those protected under Article 28G of the 1945 Constitution, which ensures personal security.² Empirical evidence demonstrates that sexual harassment occurs extensively across domestic, workplace, and educational settings, frequently driven by power imbalances between perpetrators and victims.³ Criminalizing these acts is essential, as law enforcement efforts have often been constrained by restrictive legal definitions and inflexible evidentiary standards that marginalize victims within the criminal justice system.⁴

Indonesia's criminal legal framework, historically based on the old Criminal Code (KUHP), has been widely regarded as inadequate for providing comprehensive protection, as it only recognizes specific forms of sexual violence with strict limitations, such as requiring physical penetration or actual physical violence.⁵ This legal vacuum (*recht vacuum*) has prevented prosecution of various forms of sexual harassment, including verbal harassment (catcalling), non-physical harassment, and electronic sexual exploitation. Such limitations foster a culture of impunity for perpetrators and result in prolonged trauma for victims, who frequently encounter social stigma and a legal process that lacks a victim-centered approach.⁶ Consequently, the development of progressive criminal law policies is essential to address the persistent legal gap that has left victims vulnerable and unprotected.

The enactment of Law No. 12 of 2022 on Sexual Violence Crimes represents a significant milestone and a major advancement in Indonesia's legal system.⁷ This law functions as a *lex specialis*, supplementing existing legal frameworks by adopting distributive and restorative justice paradigms that prioritize victim recovery alongside perpetrator accountability.⁸ The

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- 1 Fransisco Luis Soares and Nathanael Bagas Setyawan, "Protection of Victims of Sexual Harassment in Indonesia: A Legal and Victimological Aspect," *Semarang State University Undergraduate Law and Society Review* 3, no. 1 (2023): 27–46, <https://doi.org/10.15294/lsr.v3i1.53761>.
 - 2 Setiawan Adiputra Agsel Awanisa Yemina Hotmaria Purba, "The Urgency of Law on Sexual Violence Criminal Act in Combating Sexual Violence in Indonesia Setiawan," *Ius Poenale* 3, no. 2 (2022): 23–34, <https://doi.org/https://doi.org/10.25041/ip.v3i1.2521> Abstract.
 - 3 Fuadi Isnawan, "Quid Pro Quo Sexual Harassment Involving an Employee Through Staycation Modus," *Jurnal Ius Constituendum* 10, no. 3 (2025): 453–70, <https://doi.org/10.26623/jic.v10i3.12473>.
 - 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): 170–96, <https://doi.org/10.14710/jphi.v4i2.170-196>.
 - 5 Sujasmin, "Penetapan Aspek Hukum Pidana Materiil Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Public Knowledge* 2, no. 1 (2024): 39–65, <https://doi.org/10.62771/pk.v2i1.15>.
 - 6 Rhaniya Silmi et al., "Legal Protections for Victims of Sexual Violence and the Rights of Victims," *Jurnal Dinamika Hukum* 24, no. 1 (2024): 1, <https://doi.org/10.20884/1.jdh.2024.24.1.3884>.
 - 7 Dimas Gibran Satrio Utomo and Tajul Arifin, "Kekerasan Seksual Pada Perempuan Berdasarkan UU No. 12 Tahun 2022," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 5 (2024): 42–55, <https://doi.org/10.62383/aliansi.v1i5.376>.
 - 8 M. Chaerul Risal, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual : Penerapan Dan Efektivitas," *Al Daulah : Jurnal Hukum Pidana Dan Ketatanggaraan* 11, no. 1 (2022): 75–93, <https://doi.org/10.24252/ad.v1i2.34207>.

TPKS Law criminalizes nine forms of sexual violence that were previously challenging to prosecute and introduces progressive procedural measures, such as allowing a victim's sole testimony as evidence when corroborated by additional proof of guilt. The law's significance extends beyond the imposition of criminal sanctions to the systematic integration of victims' rights—including protection, assistance, and restitution—at every stage of the judicial process.⁹

Indonesia faces significant legal challenges in implementing these new norms, particularly within law enforcement practices that remain influenced by patriarchal cultural values. Despite the enactment of the TPKS Law, inconsistencies between central and local implementing regulations create legal uncertainty regarding victim protection.¹⁰ Furthermore, the phenomenon of “policy criminalization” persists, where responses to criminal offenses are often reactive and lack sufficient infrastructure and law enforcement capacity. Proving cases of non-physical or verbal sexual harassment remains especially challenging, as stringent evidentiary standards frequently result in the dismissal of victims' reports during the investigative stage due to insufficient evidence.¹¹

The urgency of this research is underscored by the prevalence of workplace “staycation” dynamics and sexual harassment in higher education, both of which often involve power imbalances between supervisors and subordinates or faculty and students.¹² Victims in these contexts frequently face the difficult choice between maintaining their employment or education and reporting the harassment they have endured. Additionally, sexual harassment in public spaces, such as catcalling, is often trivialized by society despite now being legally recognized as a criminal offense.¹³ The legal system's failure to adequately address these sensitive cases not only inflicts personal harm on victims but also undermines public trust in law enforcement institutions and the state's role as protector of its citizens.¹⁴

Examining legal protection for victims of sexual harassment from a normative-juridical perspective is essential to determine the extent to which the TPKS Law achieves substantive justice. Rigorous legal analysis is required to assess the effectiveness of legal norms in addressing increasingly sophisticated criminal methods. This study is also vital for evaluating the legal implications of restitution rights and legal aid provisions for victims, which have often remained ineffective in practice.¹⁵ Without comprehensive legal analysis, the implementation of the TPKS Law risks becoming a procedural formality, failing to deliver genuine justice to victims who have lost their dignity and sense of security.

9 Salwa Salsabilla, Imran Bukhari Razif, and Ulil Albab, “Legal Protection against Sexual Violence on Women: A Study on Legislation” 5, no. 2 (2024): 249–62, <https://doi.org/https://doi.org/10.37276/sjh.v5i2.288>.

10 Jaya Hairi P and Latifah M, “Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual,” *RESWARA: Jurnal Pengabdian Kepada Masyarakat* 4, no. 1 (2023): 332–39, <https://doi.org/10.22212/jnh.v14i2.4108>.

11 Nia Shalshabila Audria Nugraha Putri, Nurini Aprilianda, and Faizin Sulistio, “The Urgency of Protection for Women Workers Against Sexual Violence in the Company Environment,” *Path of Science* 9, no. 8 (2023): 1030–36, <https://doi.org/10.22178/pos.95-19>.

12 Isnawan, “Quid Pro Quo Sexual Harassment Involving an Employee Through Staycation Modus.”

13 Putri, Aprilianda, and Sulistio, “The Urgency of Protection for Women Workers Against Sexual Violence in the Company Environment.”; Alfirdaus, Rasya', and Shofi Quddusi Nurullah Huda. 2026. “The Construction of Hijab Discourse in Tafsir Al-Mishbah: Norman Fairclough's Critical Discourse Analysis”. *Dirasat Qur'aniyyah Wa Hadithiyyah* 1 (1): 35-49. <https://darulilmijournal.com/index.php/daqiyah/article/view/21>

14 M. Chaerul Risal, “Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual : Penerapan Dan Efektivitas.”

15 Nurhayati Nurhayati et al., “Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes,” *Jurnal Dinamika Hukum* 23, no. 3 (2023): 556, <https://doi.org/10.20884/1.jdh.2023.23.3.3749>.

This study is theoretically anchored in the concepts of legal protection and substantive justice, which assert that law should serve to humanize individuals and safeguard the vulnerable. In cases of sexual harassment, legal protection must extend beyond punitive measures to include safeguards against threats, psychological support, and economic recovery through restitution.¹⁶ A central aspect of this analysis is the alignment of the TPKS Law with other relevant statutes, such as the Law on the Protection of Witnesses and Victims and the new Criminal Code, to prevent conflicting legal norms that could impede victims' access to justice. Achieving this legal transformation requires comprehensive criminal policies that balance penal and non-penal approaches.¹⁷

Practical challenges reveal that enforcement of laws against sexual harassment is frequently obstructed by cultural factors and victim-blaming attitudes. Many victims remain silent due to fear of social or academic repercussions or a lack of awareness regarding their legal rights. Accordingly, legal analysis of the TPKS Law's implementation must identify structural and cultural barriers that limit its effectiveness in society.¹⁸ Addressing these barriers is essential to ensure that the progressive intent of the TPKS Law is realized through concrete actions by law enforcement agencies, including the police, prosecution, and courts.

The urgency of this research is further underscored by the need to offer policy recommendations to the government and relevant institutions for the development and implementation of more operational and gender-sensitive regulations. While the enactment of the TPKS Law represents significant progress, its effectiveness depends on the interpretation and application of its norms in actual cases. This study seeks to address a gap in the literature by examining the post-enactment implementation of the TPKS Law, with particular emphasis on achieving substantive justice for victims. The findings are intended to serve as a scientific reference for strengthening the legal protection system for victims of sexual violence in Indonesia.

The primary objective of this study is to conduct a comprehensive analysis of the implementation of Law No. 12 of 2022 in achieving effective and equitable legal protection for victims of sexual harassment. The research will focus on legal analysis of the fulfillment of victims' rights, evidentiary mechanisms in sexual violence cases, and practical challenges in law enforcement. Utilizing a normative approach, the study aims to assess the alignment between current criminal law policies and the principles of substantive justice, thereby providing legal certainty and optimal protection for all citizens against sexual harassment.

Method

A normative legal research methodology, also known as library research, is employed in this study.¹⁹ This methodology is selected due to the study's primary focus on analyzing written positive legal norms, the synchronization of regulations, and the legal certainty provided by Law No. 12 of 2022 on Sexual Violence Crimes in the context of victim protection. Within this framework, law is regarded as a closed system of norms consisting of principles, rules, and regulations that require thorough analysis to achieve substantive justice.²⁰

16 Salsabilla, Razif, and Albab, "Legal Protection against Sexual Violence on Women: A Study on Legislation."

17 Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022."

18 Jaya Hairi P and Latifah M, "Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

19 Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022."

20 Nurhayati et al., "Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes."

The research approach integrates several components to ensure a comprehensive analysis. The first component is the statutory approach, which examines all relevant laws and regulations concerning sexual harassment, with particular attention to the relationship among the Law on the Prevention and Eradication of Sexual Violence (TPKS), the Criminal Code (KUHP), and the Law on the Protection of Witnesses and Victims.²¹ The second component is the conceptual approach, which draws on legal perspectives and doctrines to construct arguments on victim protection, restitution rights, and justice for vulnerable groups.²² The third component is the normative case approach, which analyzes selected sexual harassment cases to assess how legal norms are interpreted and implemented in Indonesian legal practice.

RESULTS AND DISCUSSION

Concept of Legal Protection for Victims of Sexual Violence

The theoretical foundation of this study is the Theory of Legal Protection, which holds the state responsible for the safety of all citizens. Legal protection for victims of sexual harassment refers to systematic efforts utilizing regulatory instruments to safeguard an individual's physical and psychological integrity from all forms of sexual exploitation.²³ Within criminal law, this protection comprises two primary dimensions: preventive protection, which emphasizes prevention through prohibitive norms, and repressive protection, which involves legal proceedings and recovery after a criminal offense has occurred.²⁴ Criminal law policy in Indonesia has shifted from a classical retributive approach focused on punishing perpetrators to a more comprehensive, integrative, and victim-centered model.²⁵

The Theory of Substantive Justice provides the primary analytical framework for assessing the implementation of Law No. 12 of 2022. Substantive justice extends beyond formal-procedural justice by requiring that legal outcomes are genuinely fair and beneficial to victims, especially those from vulnerable groups. In sexual harassment cases, justice is not achieved solely through the imprisonment of the defendant; it must also encompass the restoration of the victim's dignity and psychological well-being.²⁶ This perspective aligns with the principles of progressive law, which assert that law exists to serve humanity. Therefore, legal interpretation should consistently prioritize humanity and the protection of fundamental rights, which are often neglected in rigid judicial systems.²⁷

21 Sujasmin, "Penetapan Aspek Hukum Pidana Materiil Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

22 Kemilau Mutik et al., "Provide Legal Assistance to Civil Servants in Positions as Actors of Goods / Services Procurement in Local Government Agencies with Justice and Legal Certainty," *International Journal of Multicultural and Multireligious Understanding* 11, no. 5 (2024): 150, <https://doi.org/10.18415/ijmmu.v11i5.5711>.

23 Silmi et al., "Legal Protections for Victims of Sexual Violence and the Rights of Victims."

24 Rosania Paradiaz and Eko Sopyonyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 61–72, <https://doi.org/10.14710/jphi.v4i1.61-72>.

25 Purba, "The Urgency of Law on Sexual Violence Criminal Act in Combating Sexual Violence in Indonesia Setiawan.," Risman Setiawan, "Legal Accountability and Bureaucratic Integrity in Indonesia's Civil Service Reform: (Akuntabilitas Hukum dan Integritas Birokrasi dalam Reformasi Aparatur Sipil Negara di Indonesia)," *UNIVERSA: International Journal of Socio-Legal, Economics, Science and Educational Technology*, 1 No. 1, (2026), 75-85. <https://darulilmijournal.com/index.php/universa/article/view/148>

26 Nurhayati et al., "Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes."

27 Silmi et al., "Legal Protections for Victims of Sexual Violence and the Rights of Victims.," Anida Nadyana Novauzyah and Wahyudi, "Healthcare Negligence Resulting in Permanent Disability: A Juridical Analysis of Hospital Legal Liability: (Kelalaian Tenaga Kesehatan yang Mengakibatkan Cacat Permanen: Analisis Yuridis terhadap Tanggung Jawab Hukum Rumah Sakit)," *UNIVERSA: International Journal of Socio-Legal, Economics, Science and Educational Technology*, 1, no. 1 (2026): 13-24. <https://darulilmijournal.com/index.php/universa/article/view/129>

The Victimology perspective provides a critical analysis of the victim's role within the criminal justice system, highlighting the frequent occurrence of secondary victimization. Secondary victimization arises when victims encounter insensitive treatment from law enforcement or experience social stigmatization during the evidentiary process.²⁸ Consequently, contemporary victimology emphasizes the recognition of victims' rights, including access to information, support, and restitution as compensation.²⁹ Effective protection for victims of sexual abuse necessitates a comprehensive understanding of the long-term traumatic effects that may impede access to justice if the legal system fails to provide safe and confidential protection mechanisms.³⁰

Criminal policy serves as a state mechanism for defining criminal offenses in accordance with prevailing societal values. The criminalization of various forms of sexual harassment under the TPKS Law represents a legislative response to the phenomenon of "invisible violence," which was previously considered only an ethical violation.³¹ This policy seeks to establish legal certainty and clearly communicate that the state does not tolerate any form of harassment. Nevertheless, the effectiveness of this criminalization depends significantly on the harmonization of legal norms between the TPKS Law and other regulations, such as the Criminal Code (KUHP) and the Law on the Protection of Witnesses and Victims, to prevent legal contradictions.³²

The context of sexual harassment is closely linked to Power Relations Theory, which posits that acts of harassment often reflect domination by individuals in positions of authority over subordinates. This imbalance is particularly pronounced in workplaces, exemplified by practices such as "staycations" for contract extensions, and in educational institutions through academic intimidation.³³ Legal frameworks must address this abuse of authority by imposing stricter penalties on perpetrators who exploit their positions of power.³⁴ Without a thorough analysis of power dynamics, the enforcement of laws against sexual harassment risks becoming ineffective and failing to protect victims in dependent positions.

Ultimately, legal protection in this context represents the constitutional embodiment of Human Rights protection. Article 28G of the 1945 Constitution explicitly guarantees the protection of individuals, families, honor, dignity, property, and the right to security. Sexual harassment constitutes a direct violation of human dignity; therefore, its prevention is a fundamental obligation of the state.³⁵ Accordingly, the entire legal system and law enforcement agencies must prioritize human rights as the guiding principle throughout all stages of the legal process, from investigation to the fair enforcement of judgments for victims.

28 Soares and Setyawan, "Protection of Victims of Sexual Harassment in Indonesia: A Legal and Victimological Aspect."

29 Silmi et al., "Legal Protections for Victims of Sexual Violence and the Rights of Victims."

30 Paradias and Soponyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual."

31 Nurhayati et al., "Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes."

32 Jaya Hairi P and Latifah M, "Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

33 Isnawan, "Quid Pro Quo Sexual Harassment Involving an Employee Through Staycation Modus."

34 Sujasmin, "Penetapan Aspek Hukum Pidana Materiil Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

35 Lubna Salsabila, Karol Teovani Lodan, and Etika Khairina, "Public Engagement Impact on Sustainable Waste Management in Indonesia: Examining Public Behavior," *Jurnal Administrasi Publik Public Administration Journal* 13, no. 2 (December 20, 2023): 158–78, <https://doi.org/10.31289/jap.v13i2.10391>.

Substantive Legal Transformation: Expansion of Offenses and Legal Certainty

Research findings indicate that the enactment of Law No. 12 of 2022 has brought about a radical transformation of substantive criminal law in Indonesia by expanding the definitions and types of sexual harassment offenses.³⁶ Key findings reveal that this law successfully codifies forms of harassment that were previously difficult to prosecute, such as non-physical sexual harassment (verbal and gestural) as well as physical sexual harassment that does not involve sexual intercourse.³⁷ This expansion constitutes a concrete step toward achieving substantive justice, where the law can now protect the full spectrum of sexual offenses that undermine a person's dignity. This automatically eliminates legal uncertainty for law enforcement officials when addressing acts previously considered "gray areas" or merely non-criminal violations of moral norms.³⁸

The criminalization of these policies has proven highly relevant in addressing harassment phenomena across public and private sectors. For instance, the criminalization of non-physical sexual harassment provides a strong legal basis for addressing catcalling or degrading verbal advances in public spaces—acts previously often overlooked by legal authorities.³⁹ Furthermore, the imposition of harsher criminal penalties for perpetrators in positions of power or when the offense occurs in specific environments (such as educational institutions and workplaces) indicates that the law is now more sensitive to the context in which crimes occur. These findings confirm that the legal certainty offered by the TPKS Law is not merely textual, but rather the certainty of protection for the human rights of victims who have long been marginalized.⁴⁰

However, a critical analysis of these findings reveals significant challenges in aligning with the new Criminal Code (Law No. 1 of 2023). There are several overlapping provisions regarding sexual offenses that, if not properly managed, could lead to dual interpretations among legal practitioners.⁴¹ The intersection between the TPKS Law as *lex specialis* and the Criminal Code as *lex generalis* requires clear implementation guidelines to ensure that the spirit of special protection in the TPKS Law is not undermined by more rigid general provisions.⁴² The theoretical implication of this finding is the need to reconstruct the understanding of law enforcement officials so that they always prioritize the TPKS Law in cases of sexual violence to ensure more comprehensive protection of victims' rights.⁴³

36 Sujasmin, "Penetapan Aspek Hukum Pidana Materiil Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

37 Dimas Gibran Satrio Utomo and Tajul Arifin, "Kekerasan Seksual Pada Perempuan Berdasarkan UU No. 12 Tahun 2022."

38 Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022."

39 Putri, Aprilanda, and Sulistio, "The Urgency of Protection for Women Workers Against Sexual Violence in the Company Environment."

40 Nurhayati et al., "Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes."

41 Birokrasi Jurnal et al., "Efektivitas Penegakan Hukum Bagi Pelaku Pelecehan Seksual Pada Anak Ditinjau Dari Hukum Pidana Dosen Program Studi S1 Ilmu Hukum Universitas Khairun Ternate, Indonesia Salah Satu Orang Tua Asuh, Dean Desvi, Pada Mei 2024. F Merasa Ada Kejanggalan Di Y," *Jurnal Ilmu Hukum Dan Tata Negara* 2, no. 4 (2024): 281–89, <https://doi.org/https://doi.org/10.55606/birokrasi.v2i4.1663>.

42 Sujasmin, "Penetapan Aspek Hukum Pidana Materiil Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

43 M. Chaerul Risal, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual: Penerapan Dan Efektivitas."

In a practical context, this expansion of criminalization must be supported by massive public awareness campaigns at the grassroots level. This study found that many people in rural areas still do not fully understand that verbal harassment is now a criminal offense. Therefore, this criminal policy must not stop at the legislative level but must be translated into legal education programs targeting vulnerable communities.⁴⁴ The success of this criminalization policy is measured not by the number of people imprisoned, but by the extent to which the public feels protected and potential perpetrators feel deterred from committing acts of harassment due to the presence of a real and firm legal threat.

Reflectively, this transformation of substantive law represents a victory for the victim protection movement in Indonesia. The state has demonstrated its political commitment to combating sexual violence by expanding the scope of its laws. However, this normative progress will lose its meaning if not accompanied by the readiness of evidentiary infrastructure and the moral integrity of law enforcement officials.⁴⁵ Substantive justice will only be achieved if this expansion of criminal offenses is accompanied by the ability of law enforcement officials to interpret every action of the perpetrator within the context of the victim's suffering, rather than merely mechanically matching facts to written provisions.

Breakthroughs in Procedural Law: A Revolution in Evidence and Victim-Witness Protection

The second finding in this discussion highlights a revolution in special criminal procedure law introduced by the TPKS Law, particularly regarding the paradigm of proof. The TPKS Law stipulates that the testimony of a witness and/or victim is sufficient as valid evidence to prove the perpetrator's guilt, provided it is accompanied by one other valid piece of evidence and the judge is convinced.⁴⁶ This breakthrough is theoretically and practically crucial, given that sexual harassment often occurs in private settings without the presence of a third-party eyewitness. This provides a tangible solution to the evidentiary hurdles that have frequently led to victims' reports being discontinued at the investigative stage (SP3) due to insufficient evidence.⁴⁷

In addition to evidentiary aspects, the study's findings indicate that protective mechanisms for witnesses and victims have been significantly strengthened. The TPKS Law mandates support for victims from the initial reporting stage through to the post-judgment recovery phase.⁴⁸ This aims to minimize the risk of secondary victimization that victims often experience when dealing with an intimidating judicial system. These findings indicate that the state is beginning to adopt a restorative approach that balances prosecutorial interests with victims' safety and psychological well-being.⁴⁹ Protecting the victim's identity and using technology in court proceedings (such as video testimony) are also key measures that reduce the trauma victims face when testifying.

44 Purba, "The Urgency of Law on Sexual Violence Criminal Act in Combating Sexual Violence in Indonesia Setiawan."

45 Jaya Hairi P and Latifah M, "Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

46 Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022."

47 Isnawan, "Quid Pro Quo Sexual Harassment Involving an Employee Through Staycation Modus."

48 Silmi et al., "Legal Protections for Victims of Sexual Violence and the Rights of Victims."

49 Soares and Setyawan, "Protection of Victims of Sexual Harassment in Indonesia: A Legal and Victimological Aspect."

However, implementation on the ground still reveals a gap between norms and practice. In educational institutions, for example, there are often structural barriers in which campus bureaucracies attempt to resolve harassment cases internally to protect their reputations, which risks silencing victims. Legal analysis indicates that such actions may constitute obstruction of justice if not conducted in accordance with applicable legal procedures.⁵⁰ Therefore, strengthening the role of the Task Force for the Prevention and Handling of Sexual Violence on campus and in the workplace is urgently needed to ensure that legal avenues remain open for victims without institutional pressure.

The practical implications of this evidentiary revolution demand enhanced technical capacity for police investigators and public prosecutors. They must be able to manage electronic evidence and psychological evidence to support victims' testimonies.⁵¹ Additionally, coordination with the Witness and Victim Protection Agency and the UPTD PPA must be strengthened to ensure that victims receive physical protection and medical/psychological assistance concurrently with the ongoing legal process. Without inter-agency coordination, the formal legal breakthroughs in the TPKS Law will struggle to yield tangible impacts on the speed and accuracy of case handling.

Theoretically, this shift in the evidentiary paradigm supports the strengthening of the victim's status as a sovereign legal subject, not merely an object of proof. This aligns with the ideals of progressive law, which holds that law must be capable of responding to social realities that unjustly marginalize marginalized groups.⁵² Reflection on these findings suggests that judges should have the legal courage to apply these special evidentiary provisions to achieve substantive justice, even if this requires breaking away from conventional procedures that often fail to account for the unique nature of sexual violence crimes.

Institutionalization of the Right to Restitution: Guarantees of Recovery and Justice for Victims

The third highly significant finding in this study concerns the mandatory provisions regarding the right to restitution for victims of sexual abuse. Unlike previous regulations that treated restitution as an option difficult to enforce, the TPKS Law requires prosecutors to include the amount of restitution in their indictments and mandates that judges rule on it.⁵³ If the perpetrator is unable to pay, the state, through the Victim Trust Fund, will intervene to ensure the victim continues to receive compensation for the losses suffered. This mechanism represents a revolutionary step in Indonesia's criminal justice system, which is beginning to recognize victims' economic and psychological losses as part of the legal responsibility of both the perpetrator and the state.

An analysis of this restitution right indicates a serious effort to achieve substantive justice from an economic perspective and to restore dignity. Restitution is not merely about compensating for medical expenses or lost income, but also serves as a form of public acknowledgment of the victims' suffering. However, research findings identify challenges in assessing immaterial

50 Siti Amalia Rahmadani, Rollys Suriani, and Nurialiah Ali, "Pelecehan Seksual Menurut Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual Di Lingkungan Kampus Universitas Palangka Raya," *Ganaya : Jurnal Ilmu Sosial Dan Humaniora* 8, no. 1 (2025): 257–73, <https://doi.org/10.37329/ganaya.v8i1.3875>.

51 Jaya Hairi P and Latifah M, "Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

52 Nurhayati et al., "Seeking Substantive Justice: The Progressive Spirit of Law on Sexual Violence Crimes."

53 Sujasmin, "Penetapan Aspek Hukum Pidana Materiil Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

Legal Protection and Substantive Justice under Indonesia's TPKS Law

damages, which are often difficult to quantify with precise figures.⁵⁴ Additionally, budget constraints within the Victim Assistance Fund at the local level and lengthy bureaucratic processes remain barriers to victims' prompt access to these recovery rights.

These key findings are summarized in Table 1 below, which outlines the implementation, challenges, and implications of restitution mechanisms in practice. As shown in Table 1, the gap between normative provisions and practical implementation remains a central issue in achieving substantive justice.

Table 1. Implementation and Challenges of Restitution under the TPKS Law

Aspect	Normative Provision	Practical Challenge	Implication
Restitution Obligation	Mandatory inclusion in prosecution and court ruling	Inconsistent enforcement	Legal uncertainty for victims
Payment Mechanism	State covers via Victim Trust Fund if offender unable	Limited budget and access	Delayed compensation
Immaterial Losses	Recognized as compensable	Difficult valuation	Partial justice
Bureaucratic Process	Regulated procedure	Lengthy and complex	Barriers to access
Victim Recovery	Aimed at restoring dignity and livelihood	Weak implementation	Symbolic justice

Source: Author Analysis

More specifically, these findings are relevant to the phenomenon of sexual harassment in the workplace, such as the “staycation” modus operandi, where victims not only experience physical trauma but also lose their livelihoods as a result of refusing the perpetrator's advances.⁵⁵ In this context, restitution must include compensation for lost employment opportunities and the restoration of the victim's reputation. The state's failure to enforce restitution rights will result in court rulings that are nothing more than a victory on paper, without any tangible benefit to the victim's future livelihood. Therefore, synergy between the courts and enforcement agencies is crucial in ensuring that every rupiah of restitution actually reaches the victim.

The theoretical implications of this restitution framework reinforce the theory of integrative legal protection, which combines criminal and civil sanctions (restitution) within a single criminal justice process to ensure efficiency and justice. This also indicates that Indonesia is beginning to adopt international standards in the handling of crime victims.⁵⁶ In practice, it is recommended that the government promptly revise the technical regulations governing the management of the Victim Assistance Fund to ensure transparency and accessibility for victims from diverse economic backgrounds.

As a final reflection, the success of implementing Law No. 12 of 2022 depends heavily on a shift in mindset across all segments of society, from law enforcement officials to the general

54 Jaya Hairi P and Latifah M, “Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual.”

55 Isnawan, “Quid Pro Quo Sexual Harassment Involving an Employee Through Staycation Modus.”

56 Soares and Setyawan, “Protection of Victims of Sexual Harassment in Indonesia: A Legal and Victimological Aspect.”

public. The handling of sexual harassment must be approached with a profound humanitarian perspective, in which the protection of victims serves as the primary guiding principle in all legal action. Only through integrity, empathy, and consistency in law enforcement can the substantive justice envisioned by the TPKS Law be truly realized and provide genuine protection for all Indonesian citizens from the threat of sexual harassment.

CONCLUSION

This study demonstrates that the enactment of Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law) constitutes a fundamental transformation in Indonesia's criminal law system, particularly in strengthening legal protection for victims of sexual harassment. The findings reveal three major legal advancements. First, the expansion of substantive criminal norms now recognizes both physical and non-physical forms of sexual harassment, thereby addressing the previous legal vacuum and enhancing legal certainty. Second, the reform of evidentiary standards (allowing victim testimony supported by at least one additional piece of valid evidence) provides a practical solution to longstanding barriers in prosecuting sexual violence cases that often occur in private contexts. Third, the institutionalization of restitution as a mandatory right, supported by the Victim Trust Fund, reflects a shift from a purely retributive system toward a more victim-centered and restorative justice paradigm. Nevertheless, the study also identifies persistent challenges, including regulatory disharmonization between the TPKS Law and the new Criminal Code, limited institutional capacity among law enforcement agencies, and socio-cultural barriers such as power imbalances and victim-blaming attitudes that continue to hinder effective implementation.

The contribution of this research lies in its integrative legal analysis that connects substantive law reform, procedural innovation, and victim restitution within a unified framework of legal protection. By combining doctrinal, conceptual, and normative case approaches, this study offers a comprehensive understanding of how the TPKS Law operates not only as a legal instrument but also as a policy mechanism aimed at achieving substantive justice. The research enriches the existing literature by highlighting the importance of aligning legal norms with victim-centered principles and by emphasizing the role of legal interpretation, institutional coordination, and societal awareness in determining the effectiveness of criminal law reform. However, this study is not without limitations. As a normative legal study, it relies primarily on statutory analysis and secondary data, which limits its ability to empirically assess the actual experiences of victims and the real-world performance of law enforcement institutions. Additionally, the case approach employed is not exhaustive and may not fully capture regional variations in implementation across Indonesia's diverse legal and socio-cultural contexts.

Future research should therefore adopt a more empirical and interdisciplinary approach to complement the normative findings presented in this study. Empirical socio-legal research involving interviews with victims, law enforcement officials, and institutional stakeholders would provide deeper insights into the practical challenges of implementing the TPKS Law and the extent to which it delivers substantive justice in practice. Comparative studies examining similar legal frameworks in other jurisdictions could also offer valuable lessons for improving Indonesia's legal system. Furthermore, future studies should explore the intersection of legal reform with gender dynamics, cultural norms, and institutional behavior to better understand structural barriers to justice. Policy-oriented research focusing on the effectiveness of restitution mechanisms, the management of the Victim Trust Fund, and the capacity-building of law enforcement agencies is also highly recommended. Ultimately, advancing a holistic, evidence-based, and victim-centered approach will be essential to ensuring that the progressive ideals of the TPKS Law are translated into meaningful protection and justice for all victims of sexual harassment in Indonesia.

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