

## VIOLENCE AS A FORMAL AND MATERIAL CRIME IN THE KUHP AND THE TPKS LAW: A COMPARATIVE CONCEPTUAL STUDY

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### Abstract

Regulations on violence as a material offense in the Criminal Code (KUHP) and as a formal offense in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), with a focus on conceptual differences and their implications for criminal law enforcement in Indonesia. Violence in criminal law is not only related to the use of physical force, but also includes non-physical acts that attack the human dignity, personal freedom, and bodily autonomy of victims, particularly in the context of sexual violence. This study uses a normative legal research method with a statutory approach, a conceptual approach, and a comparative approach. The legal materials used include legislation, criminal law doctrine, and relevant literature. The analysis was conducted qualitatively by assessing the structure of the offense, protected legal interests, and evidentiary implications in each regulation. The results show that the Criminal Code predominantly formulates violence as a material offense that requires physical consequences and a causal relationship between the act and the consequences. This approach provides legal certainty, but has limitations in covering non-physical forms of violence and sexual violence based on power relations. In contrast, the TPKS Law uses a formal crime approach that emphasizes the perpetrator's actions and the context of their relationship with the victim, without requiring any specific physical consequences. This approach strengthens victim protection and facilitates evidence in criminal justice practice. This study concludes that the differences in the regulation of violence as a material crime and a formal crime reflect a paradigm shift in Indonesian criminal law toward a more victim-oriented approach. The Criminal Code and the TPKS Law complement each other within the national criminal law system and require proportional understanding in their application by law enforcement officials.

**Keywords:** Violence, Formal Crime, Material Crime, Criminal Code, TPKS Law, Victim Protection

**INTRODUCTION**

Violence is a form of legal violation that has long been viewed as reprehensible and dangerous in the criminal law system. From a modern criminal law perspective, violence is not only defined as an attack on a person's body, but also as an act that threatens a person's sense of security, personal freedom, and human dignity as a legal subject. Therefore, the regulation of violence has always occupied a strategic position in the criminal law system, as it is directly related to the primary function of criminal law, namely protecting the most fundamental legal interests (*rechtsbelangen*) in social life (Moeljatno, 2008).

In the context of Indonesian criminal law, the regulation of violence is not a single and static, but rather spread across various laws and regulations that emerged in different historical contexts and legal paradigms. The Criminal Code (KUHP), as a codification of criminal law originating from the Dutch *Wetboek van Strafrecht*, is built on the classical criminal law paradigm that positions violence primarily as a physical act that produces concrete consequences. This approach is clearly reflected in Article 89 of the Criminal Code, which defines violence as the unlawful use of physical force or strength, as well as in various provisions regarding assault that require the occurrence of injury, pain, or health problems as elements of the offense.

This construction demonstrates that the Criminal Code predominantly defines violence as a material offense, a crime that is only considered complete if the consequences prohibited by law actually occur. In a material offense, the consequences are not merely seen as factual consequences, but as essential elements that determine whether or not a crime has occurred. Therefore, criminal liability depends heavily on the ability of law enforcement officials to prove the existence of consequences and the causal relationship between the perpetrator's actions and those consequences (Simons, 1937). This approach aligns with the character of classical criminal law, which emphasizes legal certainty through objective and measurable evidence.

However, along with the development of society and increasingly complex social dynamics, the understanding of violence has undergone significant changes. Violence is no longer always present in visible physical forms, but also appears in non-physical forms such as psychological pressure, threats, emotional manipulation, abuse of power relations, and information technology-based violence. In practice, these forms of violence often cause serious and prolonged suffering for victims, although they do not always leave medically demonstrable physical injuries. This phenomenon demonstrates the gap between the social reality of violence and the concept of violence adopted by classical criminal law.

The limitations of the material offense approach in the Criminal Code become increasingly apparent in the context of sexual violence. Many incidents of sexual violence occur without the direct use of physical force, but rather through threats, psychological pressure, manipulation, or abuse of power relations that place the victim in a powerless position. In such circumstances, proving physical harm is often a major obstacle for victims seeking justice, as the suffering experienced is psychological, relational, and social, not solely physical (Arief, 2018). As a result, many sexual violence cases fail to be processed optimally because the element of harm required in the construction of a material offense is not met.

This reality has prompted the development of criminal law policies that are more responsive to victims' protection needs. The state then enacted Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) as a special criminal law instrument that explicitly expands the concept of violence. The TPKS Law no longer limits violence to the use of physical force but instead encompasses acts that attack the victim's human dignity, sexual integrity, and bodily autonomy, whether physical or non-physical. Within this framework, sexual violence is understood as a human rights violation with multidimensional impacts, encompassing physical, psychological, social, and moral aspects.

One of the key characteristics of the TPKS Law is its use of formal crimes as a model for defining criminal acts. Formal crimes are crimes that are considered complete once the prohibited act is committed, without requiring any specific consequences. With this approach, the state does not need to wait for physical injury or concrete loss to prosecute the perpetrator, because the act itself is deemed dangerous and violates protected legal interests. The formal crime approach in the TPKS Law is clearly evident in the provisions regarding non-physical sexual harassment, forced sexual intercourse, sexual exploitation, and electronic-based sexual violence.

On the other hand, the reform of national criminal law through the ratification of the new Criminal Code (Law Number 1 of 2023) also brought important changes in the regulation of crimes against morality and sexual violence. The provisions of Articles 414 to 422, Article 423, and Article 473 paragraphs (1) to (10) indicate a shift in criminal law policy that begins to recognize that certain sexual acts can be punished without always having to prove physical violence or certain consequences. However, structurally, the new Criminal Code still retains many of the characteristics of material crimes, thus opening up room for differences in interpretation with the formal crime approach used in the TPKS Law.

The differences in approach between the old Criminal Code, the new Criminal Code, and the TPKS Law raise both conceptual and practical issues in the Indonesian criminal justice system. Conceptually, these differences relate to how criminal law views the relationship between acts, consequences, and criminal responsibility. Practically, these differences have a direct impact on law enforcement, particularly in determining the appropriate articles, evidentiary strategies, and the level of protection provided to victims. Inaccuracies in understanding the characteristics of formal and material crimes have the potential to create legal uncertainty and even revictimization of victims.

In law enforcement practice, law enforcement officers often face difficulties in determining whether an act of violence should be prosecuted under the Criminal Code or the TPKS Law. Mistakes in choosing a legal regime can have serious consequences, ranging from dismissal of charges due to unmet elements of the offense to suboptimal legal protection for victims. This situation demonstrates that the distinction between formal and material offenses is not merely a theoretical issue, but a real issue that impacts the effectiveness of the criminal justice system.

Based on the above description, it can be seen that the regulation of violence in the Criminal Code and the TPKS Law reflects two different criminal law paradigms. The Criminal Code represents the classical paradigm that emphasizes physical consequences as the basis for punishment, while the TPKS Law represents the modern criminal law paradigm that emphasizes victim protection and prevention through the criminalization of dangerous acts from an early age. This difference raises the need for a comprehensive and systematic study of violence as a formal and material offense, particularly to ensure harmonization of criminal law and effective victim protection.

Therefore, this research is crucial for in-depth examination of how violence is defined as a formal and material offense in the Criminal Code and the TPKS Law, how these conceptual differences are constructed, and their implications for criminal law enforcement in Indonesia. This study is expected to provide theoretical contributions to the development of national criminal law, as well as practical contributions for law enforcement officials in implementing the law appropriately, fairly, and with a focus on victim protection.

## **RESEARCH METHODS**

The type of research used in this study is normative legal research or normative juridical research. Normative legal research examines law from a normative perspective,

namely law as norms or rules written in legislation, court decisions, and expert doctrines (Moeljatno, 2008). This research does not use field data, but rather relies on library research.

This study uses secondary data, namely data obtained through a review of relevant library and legal materials. Secondary data was chosen because this study is normative in nature and does not require field data collection. The secondary data used in this study were obtained from legal sources. These legal sources consist of the following:

- a. Primary Legal Materials
- b. Secondary Legal Materials

The data analysis technique used was normative qualitative analysis. This analysis was conducted by processing and interpreting the collected legal materials, then systematically organizing them to answer the research problem formulation (Miles, Huberman & Saldana, 2014).

## **RESULT AND DISCUSSION**

### **Regulation of Violence as a Formal and Material Crime in the Criminal Code and the TPKS Law**

The regulation of violence in Indonesian criminal law is inseparable from the fundamental purpose of criminal law itself, namely to protect the most fundamental legal interests (*rechtsbelangen*) in society. These legal interests include human bodily integrity, personal freedom, human dignity, and a sense of security as the primary prerequisites for orderly social life. Therefore, every formulation of a violent crime always reflects the state's view of the level of danger of an act and determines at what point criminal intervention is considered legitimate and necessary.

In the context of Indonesian criminal law, the regulation of violence does not arise from a single, unified paradigm. The Criminal Code (KUHP), both in its old form and the new KUHP enacted through Law Number 1 of 2023, is a criminal law product historically built on the classical criminal law paradigm. This paradigm positions violence primarily as a physical act that produces concrete and measurable consequences, so that criminal responsibility can only be imposed if those consequences actually occur.

This is normatively reflected in Article 89 of the Criminal Code, which defines violence as the unlawful use of physical force or power. This formulation demonstrates that violence, from the perspective of the Criminal Code, is understood as a physical act that directly affects the victim's physical condition. Consequently, many violent crimes in the Criminal Code are defined as material offenses, namely offenses that require certain consequences as an essential element of the crime.

A material crime is a crime that is only considered perfect if the consequences prohibited by law actually occur. In the context of violence, these consequences generally include injury, pain, health problems, or even loss of life. Without these consequences, the perpetrator's actions cannot be punished, even if the act was actually aggressive or offensive. Therefore, the consequences are not merely factual consequences but are the primary determinant of whether the elements of a crime have been met.

The clearest example of this construction is the crime of assault, as stipulated in Article 351 of the Criminal Code. This article explicitly requires that the victim experience injury or pain. If such an injury cannot be proven, the perpetrator's actions cannot be classified as assault. Moeljatno emphasized that in material crimes, the consequence is an integral part of the criminal act, as it is the consequence that demonstrates that a protected legal interest has been truly violated.

A direct implication of this material crime construction is the high standard of proof in the criminal justice process. The public prosecutor is not only required to prove the act, but also to prove the effect and the causal relationship (*causaliteit*) between the act and the effect.

In practice, this proof relies heavily on medical evidence, particularly the post-mortem examination (*visum et repertum*), which serves to demonstrate the presence of injuries or health problems in the victim. Lamintang stated that without strong medical evidence, the elements of a material crime are often deemed unfulfilled by judges.

From a legal certainty perspective, the material offense approach has the advantage of providing clear and objective boundaries regarding when an act can be punished. Judges have a relatively measurable benchmark for assessing whether the elements of a crime have been met. However, this approach also has serious limitations when faced with the development of modern forms of violence that do not always produce visible physical consequences.

Developments in modern society demonstrate that violence is no longer limited to the use of physical force. Violence can be perpetrated through psychological pressure, threats, emotional manipulation, abuse of power, and through information technology. In many cases, particularly sexual violence, the suffering experienced by victims is psychological and relational, and therefore does not always leave physical wounds that can be proven medically. This situation demonstrates a gap between the concept of violence in classical criminal law and the social reality of violence that develops in society.

These limitations have led to the development of more responsive criminal law policies aimed at protecting victims, one of which is through the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). The TPKS Law explicitly broadens the concept of violence, particularly sexual violence, by no longer limiting violence to the use of physical force. Sexual violence is understood as any act that violates the victim's human dignity, sexual integrity, and bodily autonomy, whether physical or non-physical.

Article 1, number 1 of the TPKS Law defines sexual violence broadly, encompassing acts committed through coercion, threats, abuse of power, dependency, or a state of helplessness. This definition demonstrates that the primary focus of the TPKS Law is not on the physical consequences, but rather on the nature of the act and the relationship between the perpetrator and the victim. Therefore, the TPKS Law no longer places physical injury as a primary requirement for criminal punishment.

The primary characteristic of the TPKS Law lies in its use of formal offenses as a model for defining criminal acts. Formal offenses are considered complete upon the commission of an act, without requiring any specific consequences. In this context, the state does not need to wait for concrete harm to occur before undertaking criminal intervention, as the act itself is deemed dangerous and violates protected legal interests.

The formal crime approach in the TPKS Law is evident in the provisions regarding non-physical sexual harassment, forced sexual intercourse, sexual exploitation, and electronic-based sexual violence. The primary element that must be proven is not physical consequences, but rather the act being committed without the victim's consent or through abuse of power. Thus, the crime structure in the TPKS Law is consciously designed to facilitate proof and strengthen victim protection.

Barda Nawawi Arief (2016) emphasized that modern criminal law no longer solely protects physical legal interests, but also psychological, moral, and social ones. Within this framework, the use of formal offenses in the TPKS Law cannot be viewed as a weakening of criminal law principles, but rather as a rational criminal policy choice oriented toward victim protection.

In addition to the TPKS Law, the reform of national criminal law through the new Criminal Code also shows a shift in the regulation of crimes against morality and sexual violence. Articles 414 to 422, Article 423, and Article 473 paragraphs (1) to (10) of the new Criminal Code begin to recognize that certain sexual acts can be punished without always requiring physical violence or certain consequences. However, structurally, the new Criminal

Code still retains many of the characteristics of material crimes, thus giving rise to the potential for differences in interpretation with the formal crime approach in the TPKS Law.

Thus, the regulation of violence in the Criminal Code and the TPKS Law demonstrates two distinct yet coexisting approaches within the Indonesian criminal justice system. The Criminal Code tends to maintain a consequence-oriented paradigm of material offenses, while the TPKS Law adopts a formal offense paradigm focused on victim protection and early prevention. This distinction provides an important basis for further analysis in the context of conceptual differences and their implications for law enforcement.

### **Conceptual Differences Between Violence as a Formal and Material Crime between the Criminal Code and the TPKS Law and Their Implications for Law Enforcement**

The distinction between violence as a material offense and a formal offense is essentially a conceptual difference rooted in how criminal law views the relationship between actions, consequences, and criminal responsibility. This distinction is not simply a technical matter of article formulation, but rather reflects a different paradigm regarding when the state has the right to intervene in criminal matters and which legal interests are prioritized for protection. Therefore, an analysis of the differences between material and formal offenses must be placed within the philosophical framework of criminal law and the objectives of punishment itself.

In material crimes, as predominantly used in the Criminal Code, an act only acquires criminal relevance if it has produced certain consequences prohibited by law. These consequences serve as objective indicators that protected legal interests, particularly bodily integrity and physical health, have been clearly violated. Therefore, violence in material crimes is always understood in a causal relationship, where the perpetrator's actions must be proven to be the direct cause of the resulting consequences. Without these consequences, the perpetrator's actions cannot be punished, even if in fact an aggressive or offensive act has occurred.

This approach reflects the character of classical criminal law, which places consequences at the heart of a criminal act. Moeljatno emphasized that in material crimes, consequences are an essential element in determining whether a crime exists, as they can be proven through the consequences that a legal interest has been truly violated. Physical consequences are positioned as an objective measure of the occurrence of a criminal violation, so criminal law only operates after concrete harm has occurred.

In contrast, the formal offense, which is predominantly used in the TPKS Law, is based on the understanding that certain acts are sufficiently dangerous to legal interests in themselves that punishment need not await the emergence of specific consequences. In formal offenses, the primary focus is no longer on the outcome of the act, but rather on the nature of the act itself and the context of the relationship between the perpetrator and the victim. Thus, the offense is considered complete upon the act's commission, regardless of whether or not there are medically demonstrable physical consequences.

This difference indicates a paradigm shift from a physicalistic approach to a normative and relational one. While the Criminal Code emphasizes objective aspects, such as visible physical consequences, the TPKS Law emphasizes violations of human dignity, bodily autonomy, and sexual freedom of victims. In this context, violence is no longer understood solely as an attack on the body, but as an act that places the victim in a powerless position through coercion, threats, manipulation, or abuse of power relations.

These conceptual differences are also reflected in the legal interests (*rechtsbelangen*) protected by each regulation. In the Criminal Code, the legal interests protected by the regulation of violence are traditional and concrete, particularly bodily integrity and physical health. Simons states that violence in classical criminal law should be understood as the use of

physical force that reduces the victim's ability to resist. This view places the human body as the primary object of criminal law protection.

In contrast, the TPKS Law significantly expands the scope of protected legal interests. In addition to bodily integrity, the TPKS Law explicitly protects human dignity, sexual integrity, freedom of sexual choice, and the victim's sense of security. This protection no longer hinges on the presence or absence of physical injury, but rather on the violation of the victim's human rights and personal autonomy. Thus, psychological suffering, mental distress, fear, and loss of bodily control are considered legally relevant forms of harm.

This expansion of legal interests demonstrates that Indonesian criminal law is moving toward a more humanistic and responsive approach to social realities. Criminal law no longer solely protects physical and measurable interests, but also psychological, moral, and social ones. This shift is particularly important in the context of sexual violence, where the harm experienced by victims is often more psychological and relational than physical.

The most obvious difference between material and formal crimes lies in the structure of the elements of the offense and their implications for proof. In material crimes, the element of consequence is an essential element that must be proven by the public prosecutor. Proof must not only include the existence of an act and a consequence, but must also demonstrate a causal relationship (*causaliteit*) between the perpetrator's actions and the consequences experienced by the victim. Utrecht emphasized that a causal relationship is the heart of criminal responsibility in material crimes, because without proof of causality, the perpetrator cannot be held responsible for the consequences that occur.

As a result, proving material crimes is complex and relies heavily on objective evidence, such as post-mortem examinations (*visum et repertum*), medical expert testimony, and other forensic evidence. This complexity often presents an obstacle to law enforcement, particularly when physical effects are no longer visible, are reported late, or do not leave medically verifiable marks. In the context of sexual violence, this often makes cases difficult to prove, even when the victim has experienced real suffering.

In contrast, in formal crimes, the element of consequence is not a determining factor in the occurrence of a crime. The burden of proof rests on proving the act and the context in which it occurred. Under the TPKS Law, the burden of proof focuses on whether the act was committed without the victim's consent, through coercion, threats, abuse of power, or under certain conditions of dependency. Therefore, the evidence used is no longer limited to medical evidence but can include witness testimony, electronic evidence, communication recordings, and psychological expert testimony.

This difference in evidentiary structures has significant implications for victims' access to justice. In material crimes, victims often face difficulties in providing evidence when physical injuries cannot be conclusively proven, potentially leading to the case being dismissed or resulting in an acquittal. Conversely, in formal crimes, victims have a broader range of evidentiary opportunities because they are not burdened with the burden of proving physical injuries. This approach significantly strengthens the victim's position in the criminal justice process and reduces the risk of revictimization.

The conceptual distinction between material and formal crimes is also closely related to the adopted sentencing paradigm. Material crimes in the Criminal Code reflect a retributive sentencing paradigm, where punishment is imposed in response to concrete losses that have occurred. In this paradigm, punishment is understood as the state's moral response to the consequences of the perpetrator's actions.

In contrast, formal offenses in the TPKS Law reflect a modern criminal justice paradigm that places greater emphasis on preventive and protective functions. Punishment is no longer imposed solely because the consequences have already occurred, but because the act itself is seen as dangerous and has the potential to cause more serious harm to the victim.

Barda Nawawi Arief emphasized that modern criminal law must be directed at protecting the interests of society and victims, not solely at retaliating against the perpetrator. In the context of sexual violence, waiting for physical consequences to occur actually contradicts the goal of victim protection.

The implications of this difference for law enforcement are stark. In material crimes, law enforcement officers tend to be more cautious due to strict evidentiary standards, which provide strong protection for the suspect's rights, but often create difficulties for victims. Conversely, in formal crimes, law enforcement is more oriented toward victim protection, but requires increased capacity among officers to understand victim psychology, power relations, and non-physical evidence techniques.

From the perspective of Soerjono Soekanto's law enforcement theory, the effectiveness of enforcing material and formal offenses is influenced by legal substance, law enforcement structure, facilities and infrastructure, legal culture, and society. Normatively, the TPKS Law provides progressive legal substance. However, without increasing the capacity of officials and changing the legal culture to be more sensitive to victims, the potential protection offered by formal offenses will not be optimally realized in practice.

Thus, the conceptual distinction between violence as a material offense and a formal offense does not indicate a normative conflict between the Criminal Code and the TPKS Law, but rather demonstrates their complementary functions within the Indonesian criminal law system. Material offenses remain relevant for addressing physical violence with concrete consequences, while formal offenses exist to fill the legal gap in addressing non-physical sexual violence and power-based violence. A comprehensive understanding of these two concepts is key to realizing just, certain, and victim-oriented criminal law enforcement.

## **CONCLUSIONS**

Based on the results of normative research and the systematic discussion in Chapter IV, it can be concluded that the regulation of violence in Indonesian criminal law demonstrates a fundamental paradigm difference between the Criminal Code (KUHP) and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This difference is not merely technical in the formulation of norms, but also reflects the differing perspectives of criminal law on the nature of criminal acts, the legal interests protected, and the objectives of punishment.

First, the regulation of violence in the Criminal Code is predominantly formulated as a material offense, namely an offense that requires certain consequences as an essential element of the crime. Violence in the Criminal Code is understood as the unlawful use of physical force or power that causes physical consequences, such as injury, pain, impaired health, or loss of life. This construction shows that the Criminal Code departs from the classical criminal law paradigm that places physical consequences as the primary indicator of violations of legal interests, especially the bodily integrity and physical health of the victim. Consequently, criminal liability in the Criminal Code is highly dependent on proving the consequences and the causal relationship between the act and those consequences.

Second, the TPKS Law introduces a different approach by defining most acts of sexual violence as formal crimes, that is, crimes that are considered complete from the moment the act is committed without requiring any specific consequences. Sexual violence in the TPKS Law is no longer understood solely as a physical attack, but rather as an act that attacks the victim's human dignity, sexual integrity, and bodily autonomy, whether committed physically or non-physically. This approach demonstrates a paradigm shift in Indonesian criminal law toward broader legal protection, including the psychological, moral, and relational aspects of the victim.

Third, the conceptual differences between material offenses in the Criminal Code and formal offenses in the TPKS Law have significant implications for criminal law enforcement, particularly in terms of providing evidence and protecting victims. In material offenses, the evidentiary framework is complex and multi-layered, requiring proof of the act, its consequences, and the causal relationship, which in practice often presents obstacles for victims of non-physical sexual violence. Conversely, in formal offenses, the focus of the evidentiary framework is directed at the perpetrator's actions and the context of their relationship with the victim, thus providing victims with a greater opportunity to obtain justice without the burden of proving physical consequences.

Fourth, these differences also reflect differing paradigms of punishment. Material offenses in the Indonesian Criminal Code (KUHP) reflect a more retributive paradigm, emphasizing retribution for concrete losses that have occurred, while formal offenses in the TPKS Law reflect a preventive and protective paradigm, placing victim protection and violence prevention as the primary goals of punishment. Thus, these two approaches are not mutually exclusive, but rather complementary within the Indonesian criminal law system.

Based on this overall analysis, it can be emphasized that a comprehensive understanding of the differences between material and formal crimes is key to ensuring the fair, certain, and victim-oriented application of criminal law. The Criminal Code remains relevant for addressing physical violence with concrete consequences, while the TPKS Law addresses the legal gap in addressing non-physical and power-based sexual violence.

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