

**PROTECTION OF VICTIMS OF GENDER-BASED VIOLENCE****Phrianindya Ayu Setyaningsih<sup>1\*</sup>, Lidia Rina Dyahtaryani<sup>2</sup>, Sudarto<sup>3</sup>**<sup>1,2,3</sup>Marshal Suryadarma Aerospace University, East Jakarta, Indonesiaphrianindyaayusetyaningsih@gmail.com<sup>1\*</sup>, lidia@gmail.com<sup>2</sup>, sudarto@gmail.com<sup>3</sup>**Abstract**

This research examines the protection of victims of gender-based violence under Law Number 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS). Gender-based violence constitutes a serious violation of human rights that causes significant physical, psychological, social, and economic impacts on victims. Although the Indonesian government has enacted the TPKS Law as a legal framework to address sexual violence, the implementation of victim protection still encounters various challenges within the criminal justice system. The objectives of this research are to analyze the concept of victim protection for gender-based violence under the TPKS Law and to examine the obstacles in determining victim protection as well as their implications for the fulfillment of victims' rights. This research employs a normative legal research method using a statutory approach and a conceptual approach. The analysis is conducted using victimology theory, punishment theory, and criminal justice system theory. The results of this study indicate that the TPKS Law provides a more comprehensive legal framework for victim protection through the recognition of victims' rights to handling, protection, and recovery, including the right to restitution and integrated recovery services. However, the implementation of victim protection still faces several obstacles, including the limited availability of implementing regulations, lack of victim-oriented perspectives among law enforcement officers, inadequate victim recovery facilities, and persistent social stigma and victim blaming within society. Therefore, strengthening the implementation of the TPKS Law through improved capacity of law enforcement officials, enhancement of victim protection services, and transformation of societal perspectives is essential to ensure effective protection for victims of gender-based violence.

**Keywords:** Gender-Based Violence, Victim Protection, TPKS Law, Criminal Justice System, Victim Recovery

## INTRODUCTION

Sexual violence is a form of human rights violation that has serious physical, psychological, social, and economic consequences for victims. These acts can include degrading, coercive, or engaging in sexual activity against someone without the victim's consent. Sexual violence not only causes immediate harm but can also lead to long-term suffering for victims, including psychological trauma, mental health disorders, and social harm that impact the victim's life for a long time.

Sexual violence can happen to anyone, regardless of age, educational background, or social status. However, in practice, the most vulnerable groups are women and children. This vulnerability is inextricably linked to social constructs that place women in a weaker position in social relations. In this context, sexual violence is often linked to unequal power relations, leaving victims in a difficult position to resist or obtain optimal legal protection.

The impact of sexual violence is not limited to physical harm but also includes profound psychological trauma. Victims often experience mental health problems such as anxiety, depression, loss of self-confidence, and post-traumatic stress disorder. Furthermore, victims often face social stigma from their environment, which often blames them for the events they experienced. This often worsens the victim's situation and hinders the recovery process, which is part of their rights under the legal protection system (WHO, 2021).

Sexual violence can occur in various social settings, including the family, workplace, public spaces, and educational settings. Universities, which should be safe spaces for education, often become sites of sexual violence. Many victims are reluctant to report their experiences due to fear, social pressure, and concerns about stigma. This situation demonstrates that the system for protecting victims of sexual violence still faces various obstacles, both socially and legally.

As a nation governed by the rule of law that upholds the principles of human rights, Indonesia is obligated to provide legal protection to every citizen, including victims of sexual violence. The principles of equality and non-discrimination are essential components of human rights protection that must be guaranteed by the state. Therefore, protecting victims of gender-based violence is part of the state's efforts to guarantee the rights to security, self-protection, and human dignity, as mandated by the constitution (Law No. 39, 1999).

In criminal law studies, sexual violence is understood not only as an unlawful act that causes harm to the victim, but also as a social phenomenon influenced by various factors such as patriarchal culture, unequal power relations, and low legal awareness in society. These factors often leave victims in a difficult position to obtain justice. Therefore, the approach to handling sexual violence must not only focus on punishing the perpetrator but also pay attention to the protection and rehabilitation of the victim (Mansur & Gultom, 2018).

Prior to the introduction of specific regulations regarding sexual violence, various forms of sexual violence in Indonesia were generally regulated in the Criminal Code (KUHP), specifically in the chapter on Crimes Against Morality. However, this regulation was deemed inadequate to provide comprehensive protection for victims, as it focused more on criminalizing perpetrators and did not optimally address victims' rights and reparation mechanisms. This situation has prompted the development of more comprehensive legal policies to address sexual violence in Indonesia.

As a manifestation of the state's commitment to providing legal protection for victims of sexual violence, the government subsequently enacted Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). This law serves as a crucial legal basis for preventing, addressing, and rehabilitating victims of sexual violence. The TPKS Law not only regulates criminal penalties for perpetrators but also places greater emphasis on protecting victims' rights, including the right to treatment, protection, and recovery, encompassing medical, psychological, social, and legal aspects.

One form of protection stipulated in the TPKS Law is the provision of restitution to victims. Restitution is compensation imposed on the perpetrator as a form of responsibility for the losses suffered by the victim, both material and immaterial. This regulation regarding restitution demonstrates that criminal law is not solely oriented toward punishing the perpetrator but also seeks to provide just restitution for the victim (Mulyadi, 2019).

Although the TPKS Law provides a strong legal basis for protecting victims of sexual violence, its implementation still faces various challenges in practice. These obstacles include limited understanding among law enforcement officials, a lack of victim recovery services, and a persistent culture of victim blaming within society. These conditions mean that victims' rights, including the right to comprehensive restitution and recovery, have not been fully and optimally implemented.

Empirical data shows that cases of gender-based violence in Indonesia remain at an alarming level. The National Commission on Violence Against Women, through its 2024 Annual Report (CATAHU), recorded 445,502 cases of violence against women throughout 2024, representing a 9.77% increase compared to the previous year. Although the number of complaints received by the National Commission on Violence Against Women has decreased, the average number of reports still reaches approximately 16 cases per day.

The 2024 CATAHU also recorded 330,097 cases of Gender-Based Violence against Women, a 14.17% increase compared to the previous year. Based on the context in which it occurred, gender-based violence still dominated the personal or domestic sphere, with 309,516 cases, significantly higher than the public sphere (12,004 cases) and the state sphere (209 cases). Furthermore, there were 8,368 cases from the Ministry of Women's Empowerment and Child Protection whose context was not specifically identified.

When viewed from the forms of violence reported, 2024 data shows a shift compared to the previous year. Sexual violence and psychological violence ranked highest with the same percentage of 26.94%, followed by physical violence at 26.78% and economic violence at 9.84%. More specifically, data from CATAHU partners shows that sexual violence was recorded at 17,305 cases. Meanwhile, data from direct complaints to the National Commission on Violence Against Women shows that psychological violence remains the most frequently reported form of violence with 3,660 cases, followed by sexual violence at 3,166 cases, physical violence at 2,418 cases, and economic violence at 966 cases (Komnas Perempuan, 2024). This data shows that gender-based violence remains a serious problem in Indonesian society. This high rate of violence demonstrates the need for strengthening legal protection for victims of gender-based violence, both through legal policies and through the implementation of laws and regulations that support victims.

Based on the above description, this study was conducted to further examine the legal protection for victims of gender-based violence and how the regulation and implementation of victim protection is based on Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Through this research, it is hoped that it can contribute to strengthening the victim protection system and encourage the creation of law enforcement that is more responsive to the needs of victims of gender-based violence. Based on this background, the problem formulation in this study is structured as follows: 1. What is the concept of protection for victims of gender-based violence based on Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence?, 2. What are the obstacles in determining the protection of victims of gender-based violence according to Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence and its implications for the fulfillment of victims' rights?.

## **RESEARCH METHODS**

In this paper, the author uses a normative legal research method (Subagyo, 2004). Based on the results of normative legal research using a statutory approach and a conceptual

approach, it was found that the protection of victims of gender-based violence in Indonesia has experienced quite significant developments after the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). The statutory approach is used to analyze various legal provisions governing victim protection, while the conceptual approach is used to understand important concepts such as gender-based violence, victim protection, and victim recovery in the criminal legal system (Muhammad, 2004).

## **RESULT AND DISCUSSION**

### **A. The Concept Of Protection For Victims Of Gender-Based Violence Based On The Law On Sexual Violence Criminal Acts**

The analysis in this study uses victimology theory as a grand theory, punishment theory as a middle-range theory, and criminal justice system theory as an applied theory. Through this theoretical framework, this study seeks to explain how criminal law responds to the protection needs of victims of gender-based violence while assessing the effectiveness of the implementation of existing regulations.

In the development of modern criminal law, victims are no longer positioned solely as testifiers in the criminal justice process. They are viewed as legal subjects with rights that must be protected by the state. This paradigm shift is known as the victim-centered justice approach, an approach that positions victims as the parties who deserve comprehensive protection, treatment, and recovery (Mulyadi, 2019).

#### **1. TPKS Law as Lex Specialis for Victim Protection**

Prior to the enactment of the TPKS Law, regulations regarding sexual violence in the Indonesian criminal justice system were scattered throughout the various provisions of the Criminal Code (KUHP). However, these regulations were deemed inadequate to address the various forms of sexual violence prevalent in modern society. The KUHP only addressed certain forms of sexual crimes categorized as crimes against morality (Arief, 2016).

Through the TPKS Law, the state expands the definition of sexual violence as stipulated in Article 1, number 1, to include any act that degrades, insults, or attacks a person's body, sexual desires, or reproductive function by force and against the victim's will. This definition demonstrates that sexual violence is not limited to physical acts but also encompasses various forms of acts that attack a person's sexual integrity (Law No. 12, 2022).

The existence of the TPKS Law as a *lex specialis* demonstrates the state's efforts to provide more comprehensive legal protection for victims of sexual violence. More detailed regulations regarding the forms of sexual violence and victim protection mechanisms are expected to increase the effectiveness of law enforcement and provide a sense of justice for victims.

#### **2. Victims' Rights in the TPKS Law**

The TPKS Law strongly recognizes victims' rights. Articles 66 to 70 stipulate that victims have the right to treatment, protection, and rehabilitation. These rights reflect a victim-centered justice approach, one that places victims at the center of attention in the criminal justice system (Rahayu, 2021).

The right to treatment includes health services, legal assistance, and psychological support for victims. In many cases of sexual violence, victims experience severe psychological trauma and require professional support to navigate the legal process without additional stress.

Furthermore, victims also have the right to protection during the legal process. This protection includes protecting the victim's identity, ensuring their safety from threats from the perpetrator, and protecting them from actions that could worsen their condition.

These protection efforts aim to ensure that victims can provide information freely without fear or pressure (Mulyadi, 2019).

3. Victim Recovery

One of the important innovations in the TPKS Law is the comprehensive regulation of victim recovery. Victim recovery is understood not only as treatment for physical injuries but also encompasses the psychological and social well-being of victims.

Article 70 of the TPKS Law emphasizes that victim recovery is carried out through various forms of services, including medical rehabilitation, psychological rehabilitation, social empowerment, and social reintegration. This approach demonstrates the state's recognition that victims of sexual violence experience multidimensional impacts that require comprehensive treatment (Mulia, 2020).

From a victimology perspective, victim recovery is a crucial component of substantive justice. Arif Gosita states that crime victims often experience losses that are not only physical but also psychological and social. Therefore, the legal system must provide adequate protection to prevent victims from experiencing additional suffering as a result of the legal process (Gosita, 2011).

4. Restitution as a Victim's Right

In addition to restitution, the TPKS Law also grants victims the right to restitution. Restitution is a form of compensation imposed on the perpetrator for the losses suffered by the victim as a result of the crime.

Restitution can include reimbursement for medical expenses, economic losses, and other losses arising from the crime of sexual violence. From a victimology perspective, restitution is a form of recognition of the victim's suffering and an effort to restore the victim's condition more fairly (Mansur & Gultom, 2018).

5. Integrated Handling as a Victim Protection Mechanism

The TPKS Law also introduces an integrated response mechanism for victims of sexual violence. Integrated response emphasizes the importance of coordination between various institutions authorized to provide services to victims, such as law enforcement officials, medical personnel, psychologists, and victim protection agencies.

This approach is important because victims of sexual violence often experience complex and multidimensional impacts. Therefore, victim protection cannot be achieved solely through criminal law mechanisms but also requires support from various institutions capable of providing comprehensive recovery services (Mulyadi, 2019).

## **B. Obstacles In Determining Protection For Victims Of Gender-Based Violence And Its Implications**

Although the TPKS Law has provided a fairly comprehensive protection framework, research results show that in practice, its implementation still faces various obstacles that affect the effectiveness of victim protection.

1. Regulatory Barriers

One of the main obstacles is the delay in establishing implementing regulations for the TPKS Law. This law mandates the creation of various implementing regulations, such as government regulations and presidential regulations, to regulate the technical mechanisms for its implementation (Rahayu, 2022).

2. Obstacles from Law Enforcement Officers

Another obstacle relates to the capacity of law enforcement officials to handle sexual violence cases. In practice, some officers still employ outdated paradigms that tend to blame the victim. This can cause victims to experience additional psychological stress during the legal process.

From a victimology perspective, this condition is known as secondary victimization, namely additional suffering experienced by victims due to the legal system's response to the victim (Mulyadi, 2019).

3. Facilities and Infrastructure Barriers

Limited resources and facilities also hinder the implementation of victim protection. Facilities such as integrated services, safe houses, and psychological support are still not evenly available in various regions (Mansur, 2018).

According to Soerjono Soekanto, the effectiveness of law enforcement is influenced by several factors, including legal factors, law enforcement officers, means and facilities, and community culture (Soekanto, 2014).

4. Cultural Barriers and Social Stigma

In addition to structural barriers, cultural factors also pose a serious challenge in handling cases of sexual violence. Patriarchal culture and victim-blaming practices remain strong in society, often making victims afraid to report their experiences of violence (Fakih, 2013).

5. Implications for the Fulfillment of Victims' Rights

These various obstacles impact the fulfillment of victims' rights in practice. Although victims are legally entitled to protection and reparation, in reality, many victims do not receive these rights optimally. This demonstrates that the successful implementation of the TPKS Law depends not only on the existence of regulations, but also on the effectiveness of the law enforcement system and public support.

## CONCLUSIONS

Based on the research findings, it can be concluded that Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) brings a paradigm shift in the protection of victims of gender-based violence in Indonesia. This law not only broadens the definition of sexual violence but also positions victims as subjects with the right to comprehensive treatment, protection, and recovery, including the right to restitution. Thus, legal protection no longer focuses on punishing the perpetrator but also on comprehensive victim recovery.

However, various obstacles remain in its implementation, including delays in implementing regulations, limited understanding among law enforcement officials, a lack of supporting facilities and infrastructure, and cultural factors such as stigma and victim blaming. These obstacles contribute to the suboptimal fulfillment of victims' rights. Therefore, efforts are needed to strengthen the implementation of the TPKS Law to ensure effective victim protection within Indonesia's criminal justice system.

Based on the research findings, it is recommended that the government expedite the development and harmonization of implementing regulations for the TPKS Law and strengthen the budget and infrastructure for victim services, including the provision of safe houses, medical and psychological services, and an integrated service system that is evenly distributed across all regions. This is crucial to ensure that victim protection is not merely normative but can be effectively implemented in the field. Furthermore, law enforcement officials need to improve their competence and sensitivity in handling cases of gender-based violence using a victim-centered approach and avoiding practices that lead to secondary victimization. Law enforcement must also ensure broader use of evidence and effective restitution as part of victim recovery.

Institutionally, the LPSK (Lembaga Penitentiary Agency for Women and Children), the UPTD PPA (Papa-PPA Technical Implementation Unit), and service providers need to strengthen coordination and integrated referral systems to ensure victims receive ongoing protection and recovery. Meanwhile, educational institutions and the community must play an

active role in prevention through education, stigma removal, and support for victims. Therefore, synergy is needed between the government, law enforcement officials, service agencies, educational institutions, and the community to ensure effective, fair, and sustainable protection for victims of gender-based violence.

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