

Content Analysis of Law Number 12/ 2022 on Sexual Violence based on Due Diligence Framework

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Abstrak

Penelitian ini bertujuan untuk menganalisis isi dari UU No. 12 Tahun 2012 tentang Tindak Pidana Kekerasan Seksual (UU TPKS). Konsep yang digunakan untuk menganalisis UU tersebut adalah Kerangka Uji Tuntas Akuntabilitas Negara dalam Penghapusan Kekerasan Terhadap Perempuan. Kerangka kerja ini terdiri dari lima aspek: pencegahan, perlindungan, penuntutan, pemidanaan, dan penyediaan ganti rugi dan reparasi bagi korban. Melalui kerangka kerja tersebut, penelitian ini menginvestigasi sejauh mana kebijakan UU TPKS dapat membangun sistem yang komprehensif untuk memenuhi kebutuhan korban kekerasan seksual yang beragam, multiaspek, dan multidimensi, serta memberikan keadilan bagi korban. Metode yang digunakan dalam penelitian ini adalah analisis isi. Hasil dari penelitian ini menunjukkan bahwa UU TPKS telah memenuhi lima aspek dari Kerangka Uji Tuntas. Namun, masih terdapat beberapa tantangan, seperti peraturan pelaksana yang diamanatkan belum disahkan, perspektif aparat penegak hukum yang kurang baik terhadap kesetaraan gender, mereka tidak memiliki pemahaman yang menyeluruh mengenai UU TPKS. Oleh karena itu, studi ini merekomendasikan pentingnya percepatan peluncuran peraturan pelaksana, lembaga penegak hukum harus membentuk dan/atau memperbarui peraturan di lingkungannya masing-masing dengan mengadaptasi ketentuan dalam UU TPKS dan mempercepat realisasi infrastruktur dan pendanaan terkait di Provinsi dan Kabupaten/Kota.

Keyword

Due Diligence Framework, Sexual Violence, TPKS Law, Violence against Women.

Abstract

This study aims to analyze the contents of Law No. 12/2022 on Sexual Violence Crime (TPKS law). The concept used to analyze the law is the Due Diligence Framework on State Accountability in Eliminating Violence Against Women. The framework consists of five aspects: prevention, protection, prosecution, punishment, and provision of redress and reparation for victims. Through this framework, this study investigates to what extent the TPKS Law policy can build a comprehensive system to meet the diverse, multi-aspect, and multi-dimensional needs of victims of sexual violence and provide justice to them. The method used in this study is content analysis. The results of this study show that the TPKS Law fulfills the five aspects of the Due Diligence Framework. However, there are still several challenges, such as the mandated implementing regulations have not yet been passed, law enforcement officials' poor perspective on gender equality, and they do not have a thorough understanding of the TPKS Law. Therefore, this study recommends the importance of accelerating the launch of implementing regulations, law enforcement agencies have to form and/or update regulations in respective environments by adapting

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the provisions in the TPKS Law and accelerate the realization of related infrastructure and funding in Provinces and Regencies/Cities.

1. Introduction

Sexual violence is a form of attack and threat to women's bodies, sexuality and rights and is generally related to unequal power relations between men and women. According to the National Commission on Violence Against Women (Komnas Perempuan), every year the majority of violence against women and girls occurs in private spaces, such as: family, household, romantic relationships, and public spaces such as educational institutions (Budiarti, A. I., Arianto, G. N., & Maharani, M., 2022). A 2019 survey by the Coalition for Safe Public Spaces (KRPA) found that the prevalence of harassment in public spaces against women is much higher than men. Three in five women have experienced harassment in public spaces, compared with one in ten men (Pratiwi, A. M & Niko, N., 2022)

The TPKS Law faces challenges in ensuring victims' rights due to 'problematic' regulations in its content and substance. Despite legal reforms, there is disappointment over the exclusion of rape and abortion provisions in the bill. The government argues that existing laws cover these aspects, but activists protest the limited provisions in the Criminal Code and the perceived lack of Health Law implementation. An incident highlights the struggle, where a 15-year-old girl faced imprisonment for self-terminating her pregnancy after sexual assault, later overturned by a higher court (Nikkei Asia, 2023). Therefore, States must take action to respond to actions that violate the human rights of other individuals. To determine a state's liability, the concept of due diligence was introduced (Henriksson, 2016).

2. Literature Review

In 2016, Zarizana Abdul Aziz and Janine Moussa developed 'the Due Diligence Framework on State Accountability in Eliminating Violence Against Women. This framework consists of 5Ps, namely prevention, protection, prosecution, punishment of perpetrators, and provision of redress and reparation for victims/survivors.

The Indonesian government's commitment to ending violence against women is supported by statutory regulations, which is through Law No. 12/2022 on Sexual Violence Crimes (TPKS Law). Therefore, in this research, the TPKS Law will be analyzed using a due diligence framework. By using the framework, it can be known

how far this policy is creating a comprehensive system to meet the needs and rights of victims, how the victims are protected and have access to a fair legal system during examinations/investigations, prosecutions, and trials and how the arrangements to support victims' recovery (Yentriyani, Iswarini, & Ramli, 2020).

Hence, this research aims to find out whether Law Number 12 of 2022 concerning the Crime of Sexual Violence contains matters relating to the prevention, protection, prosecution, punishment of perpetrators, and provisions of redress and reparation for victims/survivors.

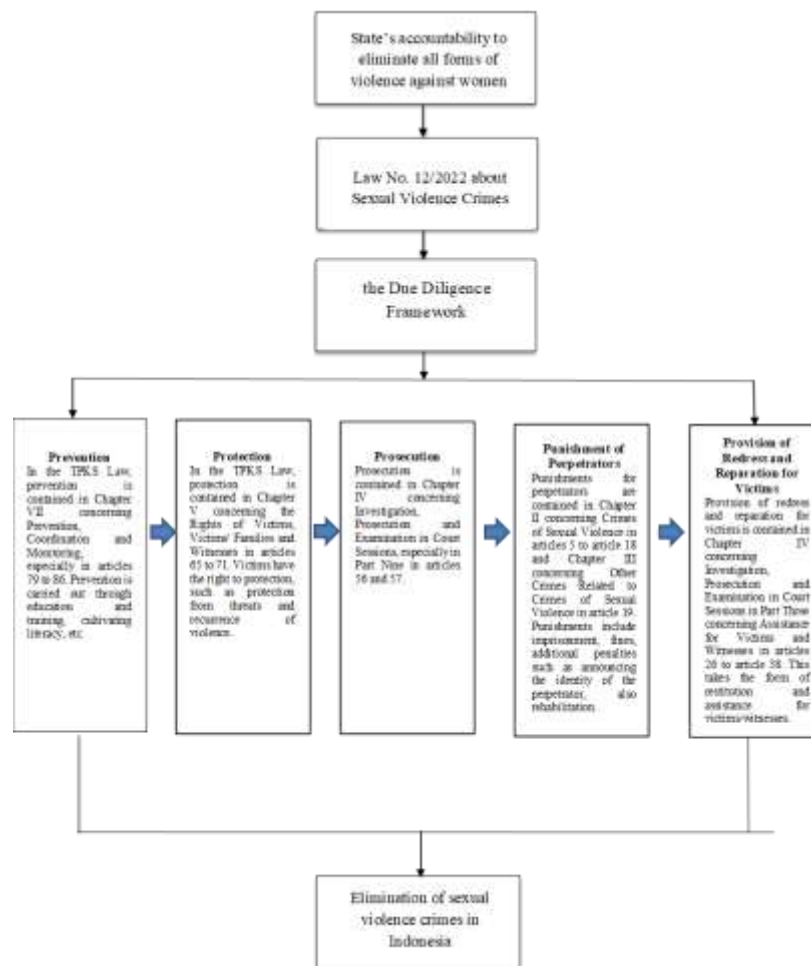


Figure 1. The research model is based on the Due Diligence Framework on State Accountability in Eliminating Violence Against Women (Azizi & Moussa, 2014: 11), modified by the author according to the research topic

3. Research Methods

The research method that is used in this study is qualitative, in particular content analysis. Hsieh and Shannon proposed three approaches to qualitative content analysis i.e. conventional, directed, and summative. The approach used in this research

is summative content analysis which starts with counting words or manifest content, then expands the analysis to include latent meanings and themes. This approach appears quantitative at the initial stage, but the aim is to explore the use of words/indicators inductively (Hsieh & Shannon, 2005).

In this research, the data source used comes primarily from documentary data, which are from official documents of Law no. 12/2022 as well as other relevant regulatory documents. And, official internet sources such as government websites and other sources such as news portals and scientific articles. In addition, an in-depth interview was conducted with the National Commission on Violence Against Women to enrich the analysis.

4. Results and Discussion

Prevention

According to the Due Diligence Framework, prevention includes government action to thwart the occurrence of sexual violence.

In Article 1 number 15, the TPKS Law emphasizes that *“prevention is any action or effort taken to eliminate various factors that cause sexual violence crimes, and the recurrence of sexual violence crimes.”*

In the TPKS Law, the prevention aspect is contained in Chapter VII concerning Prevention, Coordination, and Monitoring, Chapter VIII concerning Community and Family Participation, and Chapter X concerning International Cooperation, especially in articles 79 to 88.

1) Socialization and Education to the Public

The TPKS Law is a policy that embodies the recognition and guarantee of victims' rights and protection.

Table 4.1. Socialization and education in the TPKS Law

Article	Content of the Article
Article 85 (1)	The community can participate in preventing, assisting, recovering and monitoring criminal acts of sexual violence.
Article 85 (2)	Community participation in prevention as intended in paragraph (1) is realized by:

- a. cultivate literacy about criminal acts of sexual violence to all levels of society to prevent the occurrence of criminal acts of sexual violence and not become victims or perpetrators;
- b. socialize the laws and regulations governing the Crime of Sexual Violence; and
- c. create environmental conditions that can prevent the occurrence of criminal acts of sexual violence.

Source: Law No. 12/2022

Regarding socialization and education to the community, the TPKS Law regulates this matter in Chapter VIII Community Participation, Part One concerning Community Participation as well as in Chapter VIII, Part Two concerning Family Participation.

2) Providing Education and Training for Law Enforcement Officials and Service Personnel

Based on Article 81 (1) of the TPKS Law, the Central and Regional Governments, Ministers who carry out government affairs in the field of law and human rights are obliged to regulate and coordinate the implementation of education and training for law enforcement and service personnel. However, further provisions regarding the implementation of education and training will be regulated in a Presidential Regulation (Perpres), as mandated in Article 81 (4) (BPHN, 2023).

Table 4.2. Training and education provisions

Article	Content of the Article
Article 81 (1) – (4)	<ol style="list-style-type: none"> 1. The Central Government and Regional Governments are obliged to provide education and training for law enforcement officers, government service personnel and service personnel at Community-Based Service Provider Institutions. 2. Education and training are carried out to increase understanding regarding the Prevention and Handling of Sexual Violence Crimes.

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3. The implementation of education and training as intended in paragraph (1) is coordinated by the Minister and collaborates with the minister who carries out government affairs in the field of law and human rights.
 4. Further provisions regarding the implementation of education and training are regulated by Presidential Regulation.
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Source: Law No. 12/2022

Because implementing regulations regarding education and training are still ongoing and have not been passed, this creates challenges in implementing the TPKS Law. For example, not all members of law enforcement officers have received socialization about the TPKS Law, even though they play an important role in implementing the TPKS Law, one of which is regarding prevention. In resolving cases of sexual violence, some authorities still apply laws other than the TPKS Law, such as the Criminal Code. Apart from that, not all members of law enforcement officers know and understand the criminal aspects of the TPKS Law (Thea, 2023).

3) International Collaboration

The government can carry out international cooperation in the form of reciprocal agreements for the prevention and eradication of sexual violence or other forms of technical cooperation (Thea, 2023). International cooperation for the prevention of sexual violence in the TPKS Law is regulated in Article 88. This cooperation can be bilateral, regional, or multilateral, taking into account existing laws and regulations.

Table 4.3. International collaboration

Article	Content of the Article
Article 88	1. To make the implementation of Prevention and Handling of Crimes of Sexual Violence more effective, the Government can carry out international cooperation, whether bilateral, regional or multilateral.

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2. Cooperation as referred to in paragraph (1) is carried out in accordance with the provisions of statutory regulations.
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Source: Law No. 12/2022

4) Synergy between Institutions in Carrying Out Sexual Violence Prevention

The state must work and strive to prevent sexual violence by creating a culture of justice that is built into sustainable and long-term policies. Sexual violence is not an individual problem but is a social problem rooted in the political, social, economic, and cultural norms of that society. Therefore, the regulation of the TPKS Law regarding the prevention of sexual violence touches various fields (Komnas Perempuan, 2021).

Table 4.4 The prevention of sexual violence

Article	Content of the Article
Article 79	<ol style="list-style-type: none"> 1. The Central Government and Regional Governments are obliged to implement the Prevention of Criminal Acts of Sexual Violence in a fast, unified, and integrated manner. 2. Implementation of the Prevention of Criminal Acts of Sexual Violence as intended in paragraph (1) is carried out through the field: <ol style="list-style-type: none"> a. education; b. public facilities and infrastructure; c. governance and institutional governance; d. economy and employment e. social welfare; f. culture; g. information technology; h. religion; and i. Family.

- Article 80 Further provisions regarding the implementation of the Prevention of Criminal Acts of Sexual Violence are regulated by Government Regulations.
- Article 82 The Central Government and Regional Governments are obliged to coordinate regularly and continuously to make prevention and handling of victims more effective.
- Article 83
1. In order to effectively prevent and handle victims of criminal acts of sexual violence, the Minister carries out cross-sectoral coordination and monitoring with relevant ministries/institutions.
 2. Governors and regents/mayors coordinate and monitor Victim Prevention and Handling in the regions.
 3. Coordination as intended in paragraph (1) and paragraph (2) is carried out through planning, services, evaluation and reporting.
 4. Monitoring as intended in paragraph (1) is carried out by the Minister, the commission that handles violence against women, human rights, child protection and disabilities and is carried out by the Community.
 5. Further provisions regarding coordination and monitoring as intended in paragraph (1) are regulated by Government Regulation.
- Article 84
1. In the context of preventing and coordinating criminal acts of sexual violence, a national policy regarding the eradication of criminal acts of sexual violence has been prepared.
 2. Further provisions regarding national policy regarding the eradication of criminal acts of sexual violence as intended in paragraph (1) are regulated by Presidential Regulation.

Source: Law No. 12/2022

Furthermore, there is also synergy between four State Human Rights Institutions (LNHAM) i.e. the National Commission of Human Rights (Komnas HAM), National Commission on Violence against Women (Komnas

Perempuan), National Commission on Child's Protection (KPAI) and National Commission on Disability (KND), through the signing of a Memorandum of Understanding (MoU) to monitor the implementation of TPKS Law. The MoU has three important points, namely joint monitoring which includes prevention from upstream to downstream, creating monitoring instruments, and increasing institutional capacity (Tardi, S. A., 2023).

Protection

According to the Due Diligence Framework, protection includes avoiding further recurrence of violence and ensuring that victims/survivors receive adequate and timely services (Azizi & Moussa, 2016).

Based on Article 66 (3), further provisions regarding protection guidelines, including handling and recovery, will be regulated in the implementing regulations of the TPKS Law, namely through the bill of government regulation (RPP) concerning Prevention of Criminal Acts of Sexual Violence and Handling, Protection and Recovery of TPKS Victims, bill of Presidential Regulation (Rperpres) concerning the Implementation of Integrated Services.

1) Ensuring Victims' Rights to Protection

Guarantees of victims' rights to protection have been regulated in the TPKS Law, as shown in Table 5 below. The state is obliged to protect victims of sexual violence and their families. To provide a sense of security to victims, witnesses, and their families, the right to protection must be guaranteed.

Table 4.5. Victims' rights to protection

Article	Content of the Article
Article 69	<p>Victims' rights for protection covers:</p> <ol style="list-style-type: none"> a. Providing information regarding protection rights and facilities; b. Providing access to information on the implementation of protection; c. Protection from threats or violence from perpetrators and other parties as well as the recurrence of violence; d. Protection of confidentiality of identity;

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- e. Protection from attitudes and behavior of law enforcement officers that demean victims;
 - f. Protection from loss of employment, job transfer, education, or political access; and
 - g. Protection of victims and/or reporters from criminal charges or civil lawsuits for sexual violence crimes that have been reported.
- Article 46 1. The Central Government has the authority to delete and/or terminate access to electronic information and/or electronic documents containing criminal acts of sexual violence
2. Further provisions regarding the deletion and/or termination of access to electronic information and/or electronic documents containing the Crime of Sexual Violence as intended in paragraph (1) are regulated by Government Regulation.
- Article 47 For public interest, the prosecutor can submit a request to the head of the district court to order the ministry that carries out government affairs in the field of communications and information technology to delete electronic information and/or electronic documents containing criminal acts of sexual violence.
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Source: Law No. 12/2022

The TPKS Law has guaranteed victims' rights to protection which includes providing access to information about protection, protection from threats or violence by perpetrators of violence, and confidentiality, as regulated in Article 69. In addition, as a comprehensive response to victims, a protection order mechanism has been introduced (Law No. 12/2022, Article 69) The TPKS Law related to this aspect also has novelties and legal breakthroughs regarding the regulation of specific victims' rights for electronic-based sexual violence which requires a quick response in removing inappropriate contents (e.g. electronic information and/or electronic documents containing criminal acts of sexual violence) (Law No. 12/2022, Article 46).

2) Ensuring Availability of and Accessibility to Coordinated Support Services

Medical intervention, including psychological and social support, is very important in protecting victims of VAW. After reporting an incident of violence,

the victim/survivor may require medical and psychological treatment, alternative shelter or accommodation, and in the case of child victims, special attention from child protective services and agencies.

Table 4.6. Provisions about coordinated support services

Article	Content of the Article
Article 72	The Central Government and Regional Governments provide Integrated Services in Handling, Protection and Recovery.
Article 74	<p>The Minister organizes Integrated Services which include::</p> <ol style="list-style-type: none"> a. provision of services for victims that require national, cross-provincial and international level coordination; and b. provision of services for children who require special protection that requires national and international level coordination.
Article 75	Further provisions regarding the implementation of Integrated Services at the center are regulated by Presidential Regulation.
Article 76	<ol style="list-style-type: none"> 1. The implementation of Integrated Services as intended in Article 72 in the regions is carried out by work units that have government affairs in the field of women's empowerment and child protection. 2. Provincial and district/city regional governments are required to form UPTD PPA [a special unit] which organizes the handling, protection and recovery of victims, victims' families and/or witnesses. 3. In handling, protecting and recovering victims, the UPTD PPA is in charge to: <ol style="list-style-type: none"> a. receive reports or reach out to victims; b. provide information about victims' rights; c. facilitate the delivery of health services; d. facilitating the provision of psychological strengthening services;

- e. facilitating the provision of psychosocial services, social rehabilitation, social empowerment and social reintegration;
- f. providing legal services;
- g. identify economic empowerment needs;
- h. identify temporary shelter needs for victims and victims' families that need to be met immediately;
- i. facilitating the needs of victims with disabilities;
- j. coordinating and collaborating on the fulfillment of victims' rights with other institutions; and
- k. monitor the fulfillment of victims' rights by law enforcement officials during the judicial process.

Article 78 Further provisions regarding UPTD PPA are regulated by Presidential Regulation.

Source: Law No. 12/2022

Based on Article 70 Paragraph 4 and Article 75, further regulations will be regulated in the implementing regulations of the TPKS Law, namely through the bill of Presidential Regulation (Rperpres) concerning the Implementation of Integrated Services.

3) Ensuring Availability of and Accessibility to Protection Orders

The first priority for victims/survivors is to immediately end the violence. Restraining orders are very important to immediately stop violence eliminate fear and create a sense of security. Laws facilitate protection or restraining orders to help women escape violence and guarantee their right to live free from violence (Azizi & Moussa., 2016)

Table 4.7. Provisions about the restraining order

Article	Content of the Article
Article 42	1. Within a period of no later than 1 x 24 hours from receiving the report of a Crime of Sexual Violence, the police can provide temporary protection to the Victim

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2. Temporary protection is given based on a temporary protection order for a maximum period of 14 (fourteen) days from the time the victim is handled.
 3. For the purposes of temporary protection as referred to in paragraph (1), the police have the authority to restrict the movement of the perpetrator, whether with the aim of keeping the perpetrator away from the victim for a certain distance and time or limiting certain rights of the perpetrator.
 4. The restrictions as intended in paragraph (3) are stated in a temporary protection order.

- Article 43
1. Within a period of no later than 1X24 hours from the granting of temporary protection as intended in Article 42 paragraph (1), the police are obliged to submit a request for protection to the LPSK.
 2. The provision of protection as intended in paragraph (1) is carried out in accordance with the provisions of statutory regulations.

Article 44 In terms of providing temporary protection and protection as intended in Article 42 paragraph (1) and Article 43 paragraph (1), the police and LPSK can cooperate with UPTD PPA.

- Article 45
1. In the event that the suspect or defendant is not detained and there is concern that the suspect or defendant will commit a crime of sexual violence, intimidation, threats, and/or violence against the victim and based on the request of the victim, family, investigator, public prosecutor, or companion, the judge can issue an establishing restrictions on the perpetrator's movement, either with the aim of keeping the perpetrator away from the victim for a certain distance and time or limiting certain rights of the perpetrator.
 2. Determination of restrictions on the movement of perpetrators as intended in paragraph (1) is given for a maximum period of 6 (six) months and can be extended 1 (one) time for a maximum period of 6 (six) months.
 3. Application for an extension of the determination of restrictions on the perpetrator's movement as intended in paragraph (2) is
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submitted no later than 7 (seven) days before the validity period of the restrictions ends.

4. Restrictions on the perpetrator's movement as intended in paragraph (2) are carried out by the police.
5. In the event that there is a violation of the determination of restrictions on the perpetrator's movement, the suspect or defendant will be detained in accordance with statutory provisions.

Source: Law No. 12/2022

The TPKS Law guarantees and regulates protection orders in Articles 42 - 45. However, there are no implementing provisions that specifically regulate temporary protection and protection orders in the TPKS Law. Protection orders must have specific implementation provisions, for example through government and police chief regulations, for police officers who handle cases where victims need protection from the perpetrators (Indonesia Judicial Research Society, 2022).

Prosecution

Procedural law regarding prosecution is regulated in Chapter IV concerning Investigation, Prosecution and Examination in Court Sessions.

1) Establishing Affirmative Duty to Investigate

Investigation refers to the task of carrying out effective action to establish the facts related to the VAW incident. This task must be carried out in an effective, fast, impartial, and comprehensive manner (Indonesia Judicial Research Society, 2022).

Table 4.8. Mechanism for investigation

Article	Content of the Article
Article 52	In the event that the Witness and/or Victim of a Crime of Sexual Violence is a Child, the investigator can carry out electronic recording or direct remote examination using an audio-visual communication device, with the consent or without the consent

of the parent or guardian, and while still paying attention to the best interests of the Child.

- Article 53
1. Examinations at the investigation stage are carried out in a special service room at the police office.
 2. In certain cases, the inspection as intended in paragraph (1) can be carried out at the UPTD PPA or other places.
- Article 54
1. Before carrying out an examination of the victim, the investigator must coordinate with the counselor regarding the victims' readiness, needs and condition.
 2. The results of coordination with the counselor as intended in paragraph (1) can be used as a basis for investigators to carry out examinations of the victim.
 3. If the victim experiences serious trauma, the investigator can ask questions through the counselor.
- Article 55
1. Investigators have the authority to create data and/or electronic systems related to Crimes of Sexual Violence so they cannot be accessed other than for the judicial process.
 2. The implementation of authority as intended in paragraph (1) is carried out based on the determination of the head of the local state prosecutor's office.

Source: Law No. 12/2022

Table 8 shows that regulations regarding investigations prioritize public values, especially the safety and comfort of victims during the judicial process. This is evidenced by the arrangements for providing special rooms in the police station for examinations and ensuring the readiness and needs of victims.

2) Establishing Affirmative Duty to Prosecute

Prosecution refers to the duty of exercising criminal jurisdiction over those responsible for human rights violations. Investigation and prosecution aim to eliminate violence against women and the process must be carried out efficiently.

Table 4.9. Mechanism of prosecution

Article	Content of the Article
Article 56	<ol style="list-style-type: none"> 1. If deemed necessary, the public prosecutor can hold a preliminary meeting with witnesses and/or victims after receiving complete investigation results from the investigator 2. The preliminary meeting as intended in paragraph (1) is held after the suspect and evidence are handed over. 3. For the purposes of the preliminary meeting, the public prosecutor shall summon witnesses and/or victims by stating the time, place and reason for the summons. 4. The preliminary meeting as intended in paragraph (1) can be held via electronic media by considering the health, security and/or safety of witnesses and/or victims. 5. In the preliminary meeting, witnesses and/or victims can be accompanied by counselor and/or family and can be attended by investigators. 6. In the preliminary meeting, the public prosecutor conveys and explains information regarding: <ol style="list-style-type: none"> a. judicial process; b. the rights of witnesses and/or victims, including the right to apply for restitution and the procedures for submitting it; c. the consequences of the decision of the witness and/or victim to attend or not attend the examination at trial to ensure the witness and/or victim can understand the situation; and d. extrajudicial examinations through electronic recording and/or direct remote examinations using audiovisual communication devices can be carried out if the witness and/or victim cannot attend the trial for reasons of health, safety, security, and/or other valid reasons.
Article 57	<ol style="list-style-type: none"> 1. In describing facts and actions related to sexuality, the public prosecutor should, as far as possible, avoid descriptions that are too detailed, vulgar and excessive in the indictment while

- still paying attention to the descriptions carefully, clearly and completely.
2. Avoiding descriptions that are too detailed, vulgar and excessive as intended in paragraph (1) is aimed at respecting the human rights, dignity and privacy of victims and preventing revictimization of victims.
 3. Explanation of facts and actions that are too detailed, vulgar and excessive as intended in paragraph (1) can be carried out as long as it is necessary to support proof of the elements of the article and/or criminal act, including criminal responsibility and the guilt of the perpetrator.
 4. In criminal cases against victims who were exploited and experienced sexual violence through electronic media or related to sexuality, the public prosecutor should avoid inclusion or copying images, illustrations and/or photos of victims or containing victim data or showing reproductive organs, activities, and/or sexual objects in the indictment.
 5. Avoiding inclusion or copying as intended in paragraph (4) aims to protect and guarantee security as well as judicial respect for the dignity and privacy of victims..

Source: Law No. 12/2022

Based on Table 9, the prosecution process regulated in the TPKS Law has ensured that the prosecution process is not traumatic for victims/survivors (eg. avoiding overly detailed and vulgar descriptions of facts to prevent revictimization of victims and conducting preliminary meetings in order to help witnesses/victims feel ready to face the court process and be able to give their best testimony).

3) Ensuring Fair Burden of Proof and Evidentiary Standards

Before the TPKS Law was passed, the Criminal Code was used as a reference for proving cases of sexual violence (International NGO Forum for Indonesian Development, 2022). However, the use of this code has not been able to fulfill the rights of victims as it is not gender sensitive. Law enforcers often consider sexual violence to be the same as other criminal acts and

therefore cannot fulfill the victims' rights (International NGO Forum for Indonesian Development, 2022).

Table 4.10. Evidentiary procedures

Article	Content of the Article
Article 24	<ol style="list-style-type: none"> 1. Valid evidence in proving the Crime of Sexual Violence consists of: <ol style="list-style-type: none"> a. evidence as intended in the criminal procedural law; b. other evidence in the form of electronic information and/or electronic documents as regulated in statutory provisions; And c. evidence used to commit a crime or as a result of a crime of sexual violence and/or objects or items related to the crime. 2. Includes evidence of witness statements, namely the results of examinations of witnesses and/or victims at the investigation stage through electronic recording. 3. Includes documentary evidence, namely: <ol style="list-style-type: none"> a. certificate from a clinical psychologist and/or psychiatrist/mental medicine specialist; b. medical records; c. forensic examination results; and/or d. results of checking bank accounts.
Article 25	<ol style="list-style-type: none"> 1. Witness and/or victim testimony is sufficient to prove that the defendant is guilty if it is accompanied by 1 (one) other valid piece of evidence and the judge is confident that a crime has indeed occurred and the defendant is guilty of committing it. 2. The family of the defendant can provide testimony as a witness under oath/affirmation, without the defendant's consent. 3. In the event that witness testimony can only be obtained from the victim, witness' testimony is not made under oath/promise, or witness' testimony is obtained from another person, the

strength of the evidence can be supported by information obtained from:

- a. a person who can provide information related to a case of the Crime of Sexual Violence even though he/she did not hear it him/herself, did not see it him/herself, and did not experience it him/herself, as long as that person's statement is related to the crime;
- b. Witnesses whose statements stand alone but are related to each other in such a way that they can confirm the existence of a particular event or situation and whose statements can be used as valid evidence both in terms of qualifying as witness statements and instructions; and/or
- c. experts who produce documentary evidence and/or experts who support evidence of criminal acts.
- d. The statements of witnesses and/or victims of persons with disabilities have the same legal force as the statements of witnesses and/or victims who are not persons with disabilities
- e. The testimony of witnesses and/or victims as intended in paragraph (a) must be supported by a personal assessment as regulated in statutory regulations regarding appropriate accommodation for Persons with Disabilities in the judicial process..

Source: Law No. 12/2022

The procedural law regarding evidence is regulated in Articles 24 and 25. The TPKS Law has expanded and added the types of evidence that can be used to prove cases of sexual violence. The new evidence includes electronic information and documents, forensic examination results and medical records, as well as bank account results (Law No. 12/2022, Article 24). The expansion of evidence in this law is intended to speed up the judicial process for claims of sexual violence committed by victims, especially because sexual violence usually occurs in the private sphere and known between the victim and the perpetrator only.

4) Ensuring Sensitivity to Confidentiality and Privacy Issues

Women who decide to report violence often have to deal not only with harsh treatment and long delays at trial but also practices such as disclosing data that reveal victims' identities, humiliate victims or put victims at greater risk. For instance, the rape case involving a child in East Luwu, South Sulawesi where East Luwu Police revealed the identity of the victim when responding to news about the case (BBC Indonesia, 2024). Not surprisingly, women are often reluctant, for financial, social, or security reasons, to participate in prosecutions. Consequently, the state must institute procedures that protect women's privacy from disclosure to the public or from harsh treatment during the investigation and prosecution process (Azizi & Moussa., 2016).

Table 4.11. Provisions about confidentiality and privacy of victims

Article	Content of the Article
Article 58	Examinations of cases of criminal sexual violence are carried out in closed sessions.
Article 59	<ol style="list-style-type: none"> 1. Judicial panel reads the decision in the case of Crime of Sexual Violence in a trial that is open to the public. 2. When reading the decision as intended in paragraph (1), the judicial panel is obliged to keep the identity of the witness and/or victim confidential. 3. The court must keep confidential information containing the identity of witnesses and/or victims in court decisions or determinations.

Source: Law No. 12/2022

The TPKS Law regulates that examinations of sexual violence cases are carried out in closed sessions. The judicial panel is obliged to maintain the confidentiality of the names of witnesses and/or victims even when reading out decisions in open court regarding cases of sexual violence.

5) Considering Alternative Dispute Resolution

Article 23 of the TPKS Law states that it is prohibited to resolve cases of criminal sexual violence outside of court, except for child perpetrators (Law

No. 12/2022, Article 24). Due to unequal power relations between victims, perpetrators, and law enforcement officials, the restorative justice method for resolving cases through conciliation is not optimal in cases of sexual violence. Recognizing this, the TPKS Law strictly prohibits the resolution of sexual violence cases outside of court (Habib, 2023).

Table 4.12. Prohibition of resolving disputes outside the court

Article	Content of the Article
Article 23	Criminal cases of sexual violence cannot be resolved outside the judicial process, except for child perpetrators as regulated in the law.

Source: Law No. 12/2022

However, considering the legal culture that still tolerates perpetrators of sexual violence, implementing Article 23 is considered difficult. In reality, there are still many cases of victims of sexual violence that are resolved outside of court. For example, the rape case of an employee of the Ministry of Cooperatives and SMEs which used restorative justice approach in handling the case (Tempo, 2024). In addition, several cases were found where law enforcement officers helped promote and facilitate peace between the perpetrator and the victim, for example by allowing the perpetrator to provide peace money so that the case would not proceed legally or by allowing the perpetrator to marry the victim (International NGO Forum for Indonesian Development, n.d).

Punishment of Perpetrators

The TPKS Law has regulated punishment for perpetrators of criminal acts of sexual violence in articles 5 - 19. Except for those regulated in the TPKS Law, criminal sanctions regulated in the Criminal Code remain in effect. This specificity is important because the Criminal Code only regulates general criminal offenses and there are no comprehensive regulations regarding sexual violence, so it has not been able to respond to various challenges faced by victims.

1) Holding Perpetrators Accountable: Certainty of Punishment

The state is obliged to act with due diligence to punish persons found guilty of VAW, regardless of whether the act was committed by a private actor or the state.

Before the TPKS Law was passed, there were still deficiencies in the legislation that had previously been implemented. For example, laws and regulations governing sexual violence are still limited in their forms, and sexual violence is considered a criminal act in general even though it is an attack on the dignity of a woman's body (Tardi, S. A., 2023).

Table 4.13. Forms of sexual violence crimes

Article	Content of the Article
Article 4	<ol style="list-style-type: none"> 1. The crime of sexual violence consists of: <ol style="list-style-type: none"> a. non-physical sexual harassment; b. physical sexual abuse; c. forced contraception; d. forced sterilization; e. forced marriage; f. sexual torture; g. sexual exploitation; h. sexual slavery; and i. electronic-based sexual violence. 2. Apart from the Crime of Sexual Violence as referred to in paragraph (1), the Crime of Sexual Violence also includes: <ol style="list-style-type: none"> a. rape; b. obscene acts; c. sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children; d. an act of violating decency that goes against the will of the Victim; e. pornography involving children or pornography that explicitly contains violence and sexual exploitation; f. forced prostitution; g. the crime of trafficking in persons aimed at sexual exploitation; h. sexual violence in the domestic sphere;

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- i. the crime of money laundering, the original crime of which is the Crime of Sexual Violence; And
 - j. other criminal acts which are declared as Crimes of Sexual Violence as regulated in the provisions of the laws and regulations.
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Source: Law No. 12/2022

As shown in table 13, the TPKS Law regulates nine forms of sexual violence that were not included in previous regulations.

Currently, the implementation of punishment for TPKS cases still faces obstacles because law enforcement officials, including police, prosecutors, and judges, do not have the same understanding regarding the TPKS Law. As a result, some authorities still handle sexual violence cases according to laws other than the TPKS Law, such as the Criminal Code. They reasoned that they were still waiting for the technical guidelines or upcoming implementing regulations. The National Police Chief has sent a telegram to all levels of the National Police to immediately use this law after it is passed, consequently, there should be no need to wait for upcoming implementing regulations (Sinombor, 2023).

2) Meeting the Goals of Punishment: Preventing Recidivism, Rehabilitating Perpetrators and Deterring Others

Punishment for offenders should prevent recidivism or a recurrence of violence, rehabilitate offenders, prepare them for reintegration, and deter others from committing the same crime. From the perpetrator's perspective, the goal of preventing the recurrence of sexual violence is to employ all methods of dealing with the perpetrator, from the criminal justice system to the implementation of court orders. However, if the intervention is only carried out to limit freedom of movement for a certain period, it will not be effective (International NGO Forum for Indonesian Development, n.d). So, another effort to prevent recidivism apart from punishing perpetrators, including the threat of imprisonment and/or fines, is through rehabilitation and it is already regulated on Article 17 of TPKS Law.

Table 4.14. Provisions about rehabilitation for perpetrators

Article	Content of the Article
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- Article 17
1. Apart from being sentenced to a crime, perpetrators of criminal acts of sexual violence can be subject to action in the form of rehabilitation.
 2. Rehabilitation as intended in paragraph (1) includes:
 - a. Medical rehabilitation; And
 - b. Social rehabilitation.

Implementation of Rehabilitation as intended in paragraph (2) is carried out under the coordination of a prosecutor and regular supervision by the minister who carries out government affairs in the social sector and the minister who carries out government affairs in the health sector.

Source: Law No. 12/2022

Provision of Redress and Reparation for Victims/Survivors

In the aspect of recovery for victims, the State ensures that there are efforts to reduce the impact suffered by victims as the result of acts of discrimination (and violence) that occurred, both in the form of compensation, restitution, rehabilitation, and others, which are realized in the form of money or goods and even symbols which provides a sense of security and comfort for victims in the long term (Azizi & Moussa., 2016).

The regulations regarding restitution and recovery in the TPKS Law are considered progressive so that they can fulfil public values to facilitate the recovery of victims. Regulations regarding restitution are specifically regulated in Articles 30 to Article 38. Meanwhile, recovery is regulated in Article 70.

1) Providing Restitution to Victims

The TPKS Law has provided certainty of restitution for victims as regulated in Articles 30 - 38.

Table 4.15. Provisions of restitution for victims

Article	Content of the Article
Article 30	<ol style="list-style-type: none"> 1. Victims of Crimes of Sexual Violence have the right to receive Restitution and Recovery services. 2. Restitution as intended in paragraph (1) is in the form of:

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- a. compensation for loss of wealth or income;
 - b. compensation for losses incurred as a result of suffering directly related to the crime of sexual violence;
 - c. reimbursement for medical and/or psychological treatment costs; and/or
 - d. compensation for other losses suffered by the Victim as a result of the Crime of Sexual Violence.

- Article 31
1. Investigators, public prosecutors and judges are obliged to notify victims and LPSK of their right to restitution.
 2. Restitution can be deposited in advance at the clerk's office of the district court where the case was examined.
 3. Investigators can confiscate the assets of perpetrators of crimes of sexual violence as collateral for restitution with permission from the local district court.
 4. Confiscation as intended in paragraph (3) is carried out by taking into account the rights of third parties who have good intention.

- Article 32
- Restitution as intended in Article 31 paragraph (2) is returned to the perpetrator in case:
- a. the case was not prosecuted because there was insufficient evidence or it turned out not to be a criminal act; and/or
 - b. based on a court decision that has obtained permanent legal force, the defendant is acquitted or released from all legal charges.

- Article 33
1. Restitution is given within a period of no later than 30 (thirty) days from the time a copy of the decision or court order is received.
 2. The prosecutor shall submit a copy of the court decision containing the grant of restitution as intended in paragraph (1) to the convict, victim and LPSK within 7 (seven) days from the receipt of the copy of the court decision.

3. In the event that the implementation of the provision of Restitution to the Victim is not fulfilled within the time limit as intended in paragraph (1), the Victim or their heirs shall notify the court of this matter.
4. The court as intended in paragraph (3) will give a written warning letter to the Restitution provider to immediately fulfill the obligation to provide Restitution to the Victim or their heirs.
5. The judge in the decision orders the prosecutor to auction off the confiscated Restitution guarantee as long as Restitution is not paid within 30 (thirty) days after the court decision which has obtained permanent legal force.
6. In the event that the Restitution entrusted as intended in Article 31 paragraph (2) and the convict's assets being auctioned as referred to in paragraph (5) exceed the amount of Restitution decided or determined by the court, the prosecutor will return the excess to the convict.
7. If the convict's assets confiscated as referred to in paragraph (5) do not cover the cost of restitution, the convict is subject to a substitute prison sentence not exceeding the principal penalty.
8. In the event that the convict as intended in paragraph (7) is a corporation, part of the corporation's business premises and/or business activities will be closed for a maximum of 1 (one) year.
9. The implementation of the substitute punishment as intended in paragraph (7) and paragraph (8) is carried out by taking into account the restitution that has been paid proportionally.

Article 34 The prosecutor prepares a report on the implementation of the Restitution and submits it to:

- a. Victims and Victims' Families;
- b. investigator; And
- c. court.

Article 35 1. In the event that the convict's confiscated assets are not sufficient to cover the costs of restitution as intended in Article

33 paragraph (7), the state shall provide compensation for the underpayment of restitution to the victim in accordance with the court decision.

2. Compensation as intended in paragraph (1) is paid through the Victim Trust Fund.
3. Victim Trust Funds as referred to in paragraph (2) can be obtained from philanthropy, society, individuals, corporate social and environmental responsibility, and other legal and non-binding sources as well as the state budget in accordance with the provisions of statutory regulations.
4. Provisions regarding the source, allocation and utilization of Victim Trust Funds as referred to in paragraph (2) are regulated by Government Regulation.

Article 37 If the perpetrator is a child, restitution is provided by the parent or guardian.

Article 38 Provisions regarding procedures for submitting Restitution are implemented in accordance with statutory provisions.

Source: Law No. 12/2022

Based on table 15, the restitution provisions in the TPKS Law demand responsibility for the perpetrator, starting from asking for compensation in the form of payment to the perpetrator, charges to third parties, confiscating property, to additional penalties if the perpetrator is unable to pay restitution to the victim.

However, in terms of content, the regulations regarding restitution still give rise to debate, for example in Article 33 paragraph (3), which states that the victim or their heirs must notify the court if restitution payments are not fulfilled within 30 days. This presents a challenge because the victim or their heirs themselves must play a role. This obligation should be delegated to the Public Prosecutor or LPSK so that the fulfillment of restitution does not only depend on the victim, but active action must be carried out by the LPSK or assigned law enforcement officers (International NGO Forum for Indonesian Development, n.d). Apart from that, the TPKS Law still allows for alternative punishment for perpetrators. Based on Article 35 (1), perpetrators whose assets

are insufficient to pay compensation receive a substitute prison sentence. The average replacement sentence is only around three months, so it will not have a deterrent effect on the perpetrator (J. F. V.D, 2023).

2) Provision of Recovery to Victims

Recovery or reparation must address the varying impacts of VAW. Women are not a homogeneous group; therefore, authorities must provide remedies according to the circumstances of each case and the needs of victims/survivors. Pain and suffering, loss of employment or educational opportunities, costs and expenses incurred or to be incurred for medical and legal costs are damages covered in a civil lawsuit (Azizi & Moussa., 2016).

Table 4.16. Provision of recovery

Article	Content of the Article
Article 67	<ol style="list-style-type: none"> 1. Victims' rights consists of: <ol style="list-style-type: none"> a. right to Treatment; b. right to Protection; c. right to Recovery. 2. Fulfilling Victims' Rights is a state obligation and is carried out in accordance with the conditions and needs of Victims.
Article 70	<ol style="list-style-type: none"> 1. The Victim's Right to Recovery as intended in Article 67 paragraph (1) letter c includes: <ol style="list-style-type: none"> a. Medical rehabilitation; b. Mental and social rehabilitation; c. Social empowerment d. Restitution and/or compensation; And e. Social reintegration. 2. Recovery before and during the judicial process consists of: <ol style="list-style-type: none"> a. provision of health services for physical recovery; b. psychological strengthening; c. providing information about Victims' Rights and the judicial process;

- d. providing information about Recovery services for Victims;
 - e. legal assistance;
 - f. providing accessibility and appropriate accommodation for Victims with Disabilities;
 - g. providing assistance with transportation, food, temporary living expenses, and adequate and safe temporary residence;
 - h. provision of religious and spiritual guidance;
 - i. providing educational facilities for victims;
 - j. provision of other supporting documents required by the Victim;
 - k. the right to information in the event that the prisoner has completed serving his sentence; And
 - l. the right to removal of sexually charged content for cases of sexual violence by electronic means.
3. Recovery after the judicial process consists of:
- a. regular and ongoing monitoring, examination and services for physical and psychological health of victims;
 - b. strengthening community support for Victim Recovery;
 - c. assistance in the use of Restitution and/or compensation;
 - d. provision of other supporting documents required by the Victim;
 - e. provision of social security services in the form of health insurance and other social assistance according to needs based on an integrated team assessment;
 - f. economic empowerment; and
 - g. provision of other needs based on the identification results of UPTD PPA and/or Community Based Service Provider Institutions.
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4. Further provisions regarding the integrated team as referred to in paragraph (3) letter e are regulated by Presidential Regulation

Source: Law No. 12/2022

Recovery requires a multi-disciplinary response, involving gender-sensitive medical, psychological, social and legal measures, and these matters have been specifically regulated in Article 70. Ultimately recovery is intended to restore the victim's dignity. This recovery can be handled through seeking truth and justice, as well as meeting physical, psychological or social needs through various services.² The main aim of recovery is to eliminate, as far as possible, the consequences and impact of the sexual violence experienced and to restore the situation that would have existed if the act had not been carried out. The victim's desire for recovery is emphasized by this Law as regulated in Articles 70.

5. Conclusion

TPKS Law has an important meaning in strengthening regulations regarding the state's responsibility to prevent, handle, protect victims, prosecute perpetrators, criminalize perpetrators, as well as provide compensation to victims of sexual violence and ensure comprehensive fulfilment of victims' rights.

The TPKS Law also fulfils the five aspects of the Due Diligence Framework and provides guarantees to realize victims' rights as a whole and mandates the state's obligation to fulfil the needs and best interests of victims. However, there are still several challenges, such as the mandated implementing regulations have not yet been passed, law enforcement officials' poor perspective on gender equality, they do not have a thorough understanding regarding the TPKS Law. Therefore, this study recommends the importance to accelerate the launch of implementing regulations, law enforcement agencies have to form and/or update regulations in respective environments by adapting the provisions in the TPKS Law and accelerate the realization of related infrastructure and funding in Provinces and Regencies/Cities.

² Redress.org, 'What is reparation? Challenges and avenues to reparation for survivors of sexual violence,' <https://www.refworld.org/pdfile/5134a9df2.pdf> (10.6.23).

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