



Aligning *Maqāṣid al-Sharī'ah* with Indonesian Criminal Law Policy: Strengthening Victim Protection in Sexual Violence Cases

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Article Process Abstract

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This article examines criminal law policy related to sexual violence, focusing on the harmonization of Islamic legal values and national regulations for victim protection. This study highlights legal reforms through Law No. 12 of 2022 on Sexual Violence Crimes (Anti-Sexual Violence Law). The research approach used is juridical-normative and qualitative, with descriptive-comparative analysis of regulatory documents. The findings show that the Anti-Sexual Violence Law shifts the criminal justice system towards victim protection, adopting a restorative and multidimensional approach. The legal substance internalizes the principle of *maqāṣid al-sharī'ah* as the ethical foundation for upholding the dignity of victims. However, implementation still faces challenges, particularly inconsistencies in the application of victims' rights such as restitution, identity protection, and the use of electronic evidence, which are often merely normative without consistent implementation. The lack of harmonization of derivative regulations exacerbates the situation, making it difficult for officials to optimally implement the Anti-Sexual Violence Law. This article recommends structural reforms and values-based training to bridge the gap between legal norms and enforcement practices.

Keywords: Criminal Law Policy, Sexual Violence, Victim-based Justice

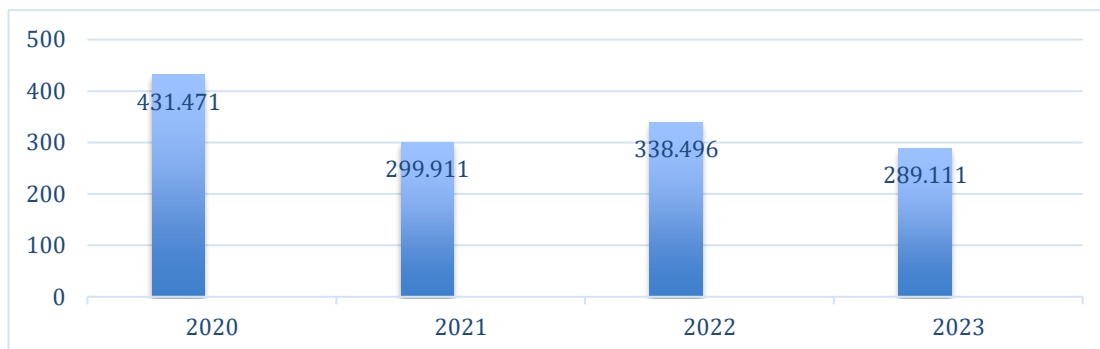
I. Introduction

Sexual violence in Indonesia is a complex and very worrying problem, with an increasing trend of cases that continue to occur. National Commission on Violence Against Women (Komnas Perempuan) annual report reveals the dynamics of the number of cases of violence against women in Indonesia from 2020 to 2023, which shows a fluctuating pattern and has not signaled consistent improvement. In 2020, there were 431,471 cases recorded.¹, but the number dropped

¹ National Commission on Violence Against Women, "Catatan Tahunan Komnas Perempuan Tahun 2020, 2021."

dramatically to 299,911 cases in 2021. A decrease of about 30.5%. The trend then reverses with an increase to 338,496 cases in 2022 (about 12.9%),² before declining again to 289,111 cases in 2023 ($\pm 14.7\%$ decrease).³ Although there has been a quantitative decline in some years, this does not necessarily reflect a substantive improvement in conditions. Factors such as recording methods, the courage of victims to report, the capacity of service institutions, and limited documentation during the pandemic have influenced the validity of these figures. This fact is summarized by the researchers in the graph below:

Graphic. 1 Trends in Violence against Women in Indonesia (2020-2023)



Source; Komnas Perempuan Annual Report 2021-2024

Responding to this situation, Law Number 12 of 2022 on the Crime of Sexual Violence (UU TPKS) was born, which specifically aims to prevent and even eliminate sexual violence. the Crime of Sexual Violence tidak hanya lahir dari kebutuhan yuridis untuk mengisi kekosongan hukum,⁴ However, its existence is inseparable from the need to ensure the protection of victims' rights as a whole, starting from recognition of the forms of violence experienced, easy access to recovery, assistance and rehabilitation, to preventing the recurrence of violence, especially women and children.

The existence of the Law on Sexual Violence Crimes is based on three dimensions of urgency: philosophical, sociological, and juridical. Philosophically, this regulation represents the state's commitment to upholding substantial justice and protecting human dignity from acts of sexual violence that intrinsically damage the integrity of the body and individual identity.⁵ From a sociological perspective, the Law on Sexual Violence Crimes is present as an answer to the rampant sexual violence that is structured, growing from unequal power relations.⁶ and

² CATAHU, "CATAHU 2023 Komnas Perempuan: Kekerasan Terhadap Perempuan Di Ranah Publik Dan Negara Meningkat," komnasperempuan.go.id, 2023.

³ Komnas Perempuan, "Ringkasan Eksekutif 'Menata Data, Menajamkan Arah: Refleksi Pendokumentasian Dan Tren Kasus Kekerasan Terhadap Perempuan 2024,'" Publikasi Ringkasan Data Komnas, 2024, https://komnasperempuan.go.id/download-file/1316?utm_source=.

⁴ Dewan Perwakilan Rakyat Indonesia, "Naskah Akademik Rancangan Undang-Undang Republik Indonesia Tentang Tindak Pidana Kekerasan Seksual Badan Legislatif," 2021, 1-140, <https://berkas.dpr.go.id/akd/dokumen/BALEG-RJ-20211228-103440-3347.pdf>.

⁵ Saptaning Ruju Paminto and Kori Hermawanti, "Perlindungan Korban Kekerasan Seksual Dalam Hukum Positif Indonesia Dan Hukum Internasional Berdasarkan Beijing Declaration," *Jurnal Dialektika Hukum*, 2023, <https://doi.org/10.36859/jdh.v5i1.1408>.

⁶ Asy'ari Asy'ari, "Relasi Kuasa Dan Tantangan Kekerasan Terhadap Perempuan Di Perguruan Tinggi Islam," *Palita: Journal of Social Religion Research* 7, no. 2 (October 20, 2022): 139-50, <https://doi.org/10.24256/pal.v7i2.3178>.

entrenched patriarchal culture⁷, and driven by public demand for a legal system that clearly favors the interests of victims.⁸

Juridically, this regulation serves to close the gap in national criminal law by providing a more comprehensive definition of sexual violence and establishing an explicit mechanism for handling and recovering victims, which was previously not included in the Criminal Code.⁹ Therefore, harmonizing the Law on Sexual Violence Crimes with other regulations, such as the 1945 Constitution, the Human Rights Law, and the Child Protection Law, is a necessity to create a just legal system. In this context, the values of Islamic law contained in maqāṣid syarī'ah such as the protection of the soul (ḥifz al-nafs), honor (ḥifz al-'ird), and offspring (ḥifz al-nasl) can be a moral and normative source that strengthens the foundation of positive law,¹⁰ so as to present a regulative synthesis that is not only legally valid, but also has ethical and theological value for the religious Indonesian society.

Various previous studies have examined aspects of Islamic law in the regulation of sexual violence in Indonesia, but the approach and focus of the study tend to be partial and have not fully integrated the principles of maqāṣid al-sharī'ah in the framework of national criminal law politics oriented towards victim protection. For example, the research conducted by Muhammad Iqbal Juliansyahzen, is more oriented towards analyzing the suitability of the regulative substance of Law No. 12 of 2022 with the principles of Sharia in general, without exploring the philosophical structure and protection of victims in the perspective of maqāṣid al-sharī'ah.¹¹ Another study by Kamalludin focuses on family therapy-based rehabilitative interventions, which carry maqāṣid al-sharī'ah as a holistic approach to post-violence recovery.¹² While the study of Musyafa'ah et al. analyzes the authority of the LPSK through the five main elements of maqāṣid al-sharī'ah, the emphasis is administrative and implementative. Similarly, Ummu Kulsum's research is a comparative study between Islamic and positive law.¹³

In the research conducted by Muhammad Gerald Arsy and Wiwin Yulianingsih (2023), the main focus lies on the normative analysis of the fulfillment of victims' rights in the Sexual Violence Crime Law (TPKS Law).¹⁴ Meanwhile, the study by Venny Zahara and her colleagues (2024) focuses on the comparison of victim protection aspects between the Criminal Code and Law No. 12 of 2022, with an emphasis on differences in regulative substance.¹⁵

⁷ Rifki Elindawati, "Perspektif Feminis Dalam Kasus Perempuan Sebagai Korban Kekerasan Seksual Di Perguruan Tinggi," *AL-WARDAH: Jurnal Kajian Perempuan, Gender Dan Agama*, 2021, <https://doi.org/10.46339/alwardah.xx.xxx>.

⁸ Separen, "Bentuk Pelindungan Terhadap Korban, Pendamping Korban, Dan Saksi Kekerasan Seksual Di Lingkungan Perguruan Tinggi," *PETITA* 5, no. 1 (June 30, 2023): 15–24, <https://doi.org/10.33373/pta.v5i1.5525>.

⁹ Hasanuddin Muhammad, "Implikasi Yuridis Pengaturan Hak Korban Tindak Pidana Kekerasan Seksual Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 9, no. 1 (July 15, 2022): 1, <https://doi.org/10.32493/SKD.v9i1.y2022.22495>.

¹⁰ Adnan Bayu Wicaksono and Winning Son Ashari, "Analisis Perlindungan Islam Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga Dalam Tinjauan Maqashid Syariah," *Rayah Al-Islam* 8, no. 3 (August 28, 2024): 888–904, <https://doi.org/10.37274/rais.v8i3.1027>.

¹¹ Muhammad Iqbal Juliansyahzen and Ocktoberrinsyah, "The Contemporary Maqāṣid Sharia Perspective on Sexual Violence Provisions in the Indonesian Law Number 12 Year 2022," *Al-Manahij: Jurnal Kajian Hukum Islam* 3, no. 1 (November 25, 2022): 269–86, <https://doi.org/10.24090/mnh.v16i2.7018>.

¹² Bhanu Prakash Nunna Iqbal Kamalludin, "Formulation of Criminal Policy on Sexual Violence Rehabilitation Based on Family Therapy with the Maqasid Al-Sharia Principles," *Jurnal Hukum Islam* 22, no. 1 (2024): 124–52.

¹³ Ummu Kalsum, Ahmad Syafii, and Randy Atma R. Massi, "Tindak Pidana Kekerasan Seksual (Perspektif Perbandingan Hukum Islam Dan Hukum Positif)," *Comparativa: Jurnal Ilmiah Perbandingan Mazhab Dan Hukum* 5, no. 1 (November 21, 2024): 99–121, <https://doi.org/10.24239/comparativa.v5i1.193>.

¹⁴ Muhammad Gerald Arsy and Wiwin Yulianingsih, "Undang - Undang Tindak Pidana Kekerasan Seksual Dalam Pemenuhan Hak Korban," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 1, no. 3 (May 27, 2023): 01–09, <https://doi.org/10.59246/aladalah.v1i3.321>.

¹⁵ Venny Zahara, Muhammad Arif Sahlepi, and Redyanto Sidi, "Comperative Legal Analysis Regarding Efforts To Prevent Sexual Violence And Legal Protection For Women In The Credit And Law Number 12 Of 2022 Concerning

Although previous academic discourses have examined the substance of the Law on Sexual Violence Crimes as well as its compatibility with the principles of Islamic law, the tendency of these studies stops at descriptive normative analysis and has not touched on the fundamental issue of how *maqāṣid al-sharī'ah* can be operationalized as a criminal policy paradigm oriented towards victim protection. This article seeks to go beyond these limitations by offering a conceptual integration of *maqāṣid al-sharī'ah* into the political framework of national criminal law that is responsive to victims' experiences. This approach asserts three main significances: first, formulating a normative-ethical framework for victim protection that is grounded in both national law and Islamic jurisprudence; second, presenting an analytical bridge between the positive law reform agenda and *maqāṣid* values (*ḥifẓ al-nafs*, *ḥifẓ al-nasl*, *ḥifẓ al-'ird*); and third, contributing a policy perspective that is more inclusive, value-based, and sensitive to the plurality of legal systems in Indonesia. Thus, this article not only adds a new dimension to academic discourse, but also presents critical arguments that are relevant for policy makers in formulating strategies to protect victims of sexual violence.

II. Research Problems

Departing from the empirical facts and literature that researchers have described, it shows that most of the research on sexual violence in the perspective of Islamic law and national law is still partial and technocratic, with an emphasis on analyzing the regulative substance or administrative approach, without comprehensively describing the *maqāshid shari'ah* principle in the political construction of criminal law oriented towards victim protection. This normative approach is inadequate to answer the complexity of sexual violence issues that require a holistic and contextual ethical, philosophical and spiritual framework. Therefore, this research becomes relevant and important to fill the epistemological as well as normative void in the development of criminal law that is responsive to the needs of victims, which in its discussion will answer how the long process of forming the UUTPKS which parses the novelty in the UUTPKS. How is the development and characteristics of criminal law regulations in tackling sexual violence in Indonesia; to what extent can the values of Islamic law, especially the principles of *maqāshid shari'ah*, be legally and systemically harmonized into national regulations; and how are the implementative challenges to the normative paradigm that has not touched the practical level in a more humanistic, value-based, and effective legal protection system for victims of sexual violence. By answering these questions, it is hoped that this research will be able to make theoretical and practical contributions to the reform of criminal law in Indonesia that is more contextual and just.

III. Research Methods

This research uses qualitative methods¹⁶with a philosophy of law and culture approach¹⁷, The purpose of this research is to present a critical analysis of the values of Islamic law in relation to the harmonization of national regulations on victim protection within the framework of the political law of sexual violence. The research data was obtained through documentation techniques and legal inventory of primary and secondary sources such as documents of Law No.

Actions Criminal Sexual Violence," *International Journal Of Humanities Education and Social Sciences (IJHESS)* 4, no. 1 (August 22, 2024), <https://doi.org/10.55227/ijhess.v4i1.1211>.

¹⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Cet. 3 (Jakarta: Universitas Indonesia, 2014).

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 13 (Jakarta: Kencana Prenada Media Group, 2017).

12 of 2022, Permendikbudristek No. 30 of 2021, Human Rights Law, PKDRT Law, Child Protection Law, and other relevant regulations; literature. 30 of 2021, Human Rights Law, PKDRT Law, Child Protection Law, and other relevant regulations; academic literature, in the form of reputable national journals, previous research results, and Islamic law books; and expert opinions, obtained through a study of the thoughts of classical and contemporary Islamic legal figures related to maqaashid shari'ah as a source of normative value, thus enabling researchers to compile a comprehensive analysis based on various normative, philosophical, and sociocultural studies.

The analysis process is strengthened with an inductive mindset, which departs from empirical facts regarding the prevalence of sexual violence in Indonesia, and is then constructed into theoretical formulations that emphasize legal protection based on the best interests of victims. The analysis is conducted systematically by interpreting and reviewing the contents of laws and regulations and legal literature to identify the extent to which maqaashid shari'ah principles, such as *hifz al-nafs* (protection of the soul), *hifz al-nasl* (protection of offspring), and *hifz al-'ird* (protection of honor), are accommodated in national legal policies. This approach refers to the concept described by Peter Mahmud Marzuki in Legal Research.¹⁸ The research is thus expected to produce findings that are not only descriptive but also reflective and normative, offering a criminal law paradigm that is responsive to the values of maqaashid al-shari'ah as well as the actual needs of victims.

IV. Result and Discussion

1. Political Transformation of Sexual Violence Criminal Law in Indonesia: A Theoretical Synthesis of the Novelty of the TPKS Law

The elimination of sexual violence in Indonesia is an urgent need born from an alarming social reality. The increasing number of cases of sexual violence, weak legal protection for victims, and the limited scope of regulations in the Criminal Code, which only partially regulates criminal acts such as rape and sexual abuse.¹⁹ Since 2012, the National Commission on Violence Against Women has initiated the Elimination of Sexual Violence Bill as a response to the national sexual violence emergency. However, the struggle for this legislation lasted for a decade. It was full of contestation due to the clash between victim-based justice values and ideological resistance that questioned the concept of sexual consent as well as concerns about the liberalization of norms of decency.²⁰ The Law on Sexual Violence Crimes, which was later renamed the Law on Sexual Violence Crimes in 2021, faced ideological resistance from several factions in the DPR, especially regarding the issue of sexual consent, which is considered controversial.²¹ Rejection, removal from *Prolegnas*, and political tug-of-war were part of the steep road that had to be traversed before the Law on Sexual Violence Crimes was finally passed on April 12, 2022..²²

¹⁸ Peter Mahmud Marzuki.

¹⁹ Dewan Perwakilan Rakyat Indonesia, "Naskah Akademik Rancangan Undang-Undang Republik Indonesia Tentang Tindak Pidana Kekerasan Seksual Badan Legislati."

²⁰ Ninik Rahayu, *Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia*, ed. Triantono, Cet. ke 2 (Jakarta: Bhuana Ilmu Populer, 2021).

²¹ Maria Ardianingtya, "Urgensi Undang Undang Penghapusan Kekerasan Seksual," Kompas.Com, 2019, <https://nasional.kompas.com/read/2019/01/25/19464641/urgensi-undang-undang-penghapusan-kekerasan-seks>

²² Salma Amelinda Iskandar, "UU TPKS: Upaya Negara Hukum Yang Membahagiakan Rakyatnya?," *Jurnal Demokrasi Dan Ketahanan Nasional* | 2 (2023): 2023.

The formation process of the Law on Sexual Violence Crimes not only reflects the dynamics of legal politics, but also shows an effort to deconstruct the criminal law paradigm that has been perpetrator-centric and retributive towards victim-centered justice by including the right to recovery, rehabilitation, and protection of the victim's identity in Articles 15-19 and Articles 67-71. This substance even adopts a sexual consent approach to ensure that the victim's willingness becomes a valid element of proof in cases of sexual violence, as well as answering the weaknesses of the Criminal Code, which tends to ignore the power relations and trauma of victims. The existence of the Law on Sexual Violence Crimes is believed to be a representation of a state of law that makes its people happy, as stated by Satjipto Rahardjo.²³ As well as Philip Nonet, who stated that the law was born as an effort to respond to abnormalities in life.²⁴

The existence of the Law on Sexual Violence Crimes is an essential milestone in the reform of criminal law based on victim justice. This regulation not only expands the definition and types of sexual violence, but also establishes special procedural law mechanisms, prevention strategies, and monitoring systems that favor victims. By integrating the principles of combined retributive, preventive, and rehabilitative punishment, the Law on Sexual Violence Crimes builds a more humanistic and contextualized legal framework. Although its implementation still faces structural and cultural challenges, the Law on Sexual Violence Crimes has opened space for a more inclusive, responsive, and socially just criminal law system.²⁵ As stated by Iskandar, the effectiveness of protection still depends on implementation commitment and cross-party cooperation, because progressive regulations without maximum implementation will only become empty norms.²⁶ Examining the existence of the TPKS Law, researchers found several reforms contained in the Law on Crimes of Sexual Violence. These reforms are:

(a) *Recognition of Nine Forms of Sexual Violence*

The crime of sexual violence can be categorized as an extraordinary crime because of its broad and complex characteristics and impacts. This statement is implicitly reflected in the preamble of the Law on Sexual Violence Crimes, letter b, that sexual violence is contrary to divine values and human values and disturbs public security and order. The severity of this crime is reflected in its multidimensional impact, including profound physical, psychological, and social suffering for victims.²⁷ Similarly, Dies Nurhayati stated that sexual violence against women not only causes physical suffering but also significant psychological and educational losses. This violence results in multiple sufferings for victims, including the subordination of women in men's biological capacity and threats to their academic future.²⁸

One of the fundamental reforms in Law Number 12 of 2022 on the Crime of Sexual Violence (UU TPKS) is the explicit recognition of nine forms of sexual violence, which include non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. The regulation of nine types of sexual violence in the Law on Sexual Violence (UU TPKS) reflects a paradigm shift in Indonesian criminal law, from a limited and fragmentary approach to a legal

²³ Satjipto Rahardjo, *Hukum Dan Perubahan Sosial: Suatu Tinjauan Teoritis* (Yogyakarta: Genta Publishing, 2007).

²⁴ Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law, Law and Society in Transition: Toward Responsive Law*, 2017, <https://doi.org/10.4324/9780203787540>.

²⁵ Rahayu, *Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia*.

²⁶ Amelinda Iskandar, "UU TPKS: Upaya Negara Hukum Yang Membahagiakan Rakyatnya?"

²⁷ Ninik Rahayu, *Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia*.

²⁸ Dies Nurhayati, "Dampak Psikologis Tindak Pidana Kekerasan Seksual Terhadap Perempuan," *Perspektif* 12, No. 3 (September 19, 2007): 269, <https://doi.org/10.30742/Perspektif.V12i3.287>.

framework that is more comprehensive, integrative, and oriented towards the protection and restoration of victims' rights.²⁹

In the perspective of legal feminist theory³⁰ especially the radical feminist type³¹, This novelty reflects the deconstruction of patriarchal legal structures that have tended to view sexual violence as limited to physical penetration or forced sexual intercourse. Radical feminist theory views sexual violence as an expression of domination and power relations that harm women, including in the non-physical and digital realms. Therefore, the Law on Sexual Violence Crimes 's recognition of electronic-based violence and reproductive coercion can be read as a critical step to dismantle legal biases that ignore victims' experiences beyond visible bodily injuries. However, philosophically, feminist theory also reminds us that the expansion of normative definitions does not necessarily erase the mindset of the apparatus and legal culture that still normalizes victim blaming and gender bias; this is in line with the opinion of I Made Wirya Darma et al who state that legal implementation still requires more fundamental paradigm reforms to ensure adequate protection and justice for women victims of sexual violence.³²

In the perspective of Islamic Law, the forms of sexual violence regulated in the Law on Sexual Violence Crimes have substantial alignment with the concept of *jarimah* in *jinayah fiqh*, including adultery which is categorized as *jarimah hudud* because of the severity of violations against honor and offspring.³³ The definition of zina emphasizes the element of sexual intercourse outside marriage as the basis for the imposition of the hadd punishment. Jurisprudence also recognizes forced zina (*zina bi al-ikrah*).³⁴ Sexual coercion is seen as a double crime because it contains elements of adultery, violence, and violation of the body.³⁵ The Law on Sexual Violence Crimes in Articles 4-15 regulates forms of sexual violence that are in line with the principles of *maqāsid al-sharī'ah*, especially the protection of the soul (*hifz al-nafs*), protection of honor (*hifz al-'ird*), and protection of offspring (*hifz al-nasl*). Philosophically, *maqāsid al-sharī'ah* can be seen as a preventive and curative measure to ensure the safety, dignity, and sustainability of social life.³⁶

Thus, the integration between legal feminist theory and *maqāsid al-sharī'ah* confirms that the novelty of the Law on Sexual Violence Crimes is not just a juridical extension, but an opportunity to formulate a more humanistic, inclusive, and value-based criminal law paradigm. This paradigm demands changes not only at the regulatory level, but also in legal culture and institutional practices so that the promised protection can be realized in reality for victims of sexual violence in Indonesia.

²⁹ Leony Sondang Suryani And Ahmad Khozi, "Ketentuan TPKS Dalam KUHP Baru," *Jurnal Hukum & Pembangunan* 53, No. 2 (2023), <https://doi.org/10.21143/jhp.vol53.no2.1561>.

³⁰ C. A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989).

³¹ Martha Albertson Fineman, *Transcending the Boundaries of Law: Generations of Feminism and Legal Theory*, *Transcending the Boundaries of Law: Generations of Feminism and Legal Theory*, 2010, <https://doi.org/10.4324/9780203848531>.

³² I Made Wirya Darma, I Gusti A A Mas Triwulandari, and Dewi Bunga, "Victim Blaming: Labeling For Women Victims Of Sexual Violence In Human Rights Perspective," *International Journal of Law Reconstruction* 6, no. 2 (September 26, 2022): 212, <https://doi.org/10.26532/ijlr.v6i2.23887>.

³³ Topo Santoso, *Hukum Pidana Islam: Perspektif, Teori Dan Pemikiran* (Jakarta: Prenadamedia Group, 2017).

³⁴ Ahmad Syaerozi, "A Comparison Between Fikih Syafi'iyah And The Sexual Violence Criminal Act Law Relating To Women's Legal Protection," *Jurnal AlifLam: Journal of Islamic Studies and Humanities* 5, no. 01 (August 27, 2024): 16-28, <https://doi.org/10.51700/aliflam.v5i01.697>.

³⁵ Asyhari Abd.Ghofar, *Pandangan Islam Tentang Zinah Dan Perkawinan Sesudah Hamil*, (Jakarta: Andes Utama, Jakarta, 2000).

³⁶ Bayu Wicaksono and Son Ashari, "Analisis Perlindungan Islam Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga Dalam Tinjauan Maqashid Syariah."

(b) *Victim-centered approach*

Law No. 12 of 2022 on TPKS presents a significant reform through a victim-oriented approach to criminal law, placing victims at the center of the judicial process. As stated by Arista and Herawati, this approach includes the fulfillment of the right to information, legal and psychological assistance, protection from intimidation, and sustainable recovery.³⁷ This new paradigm marks a shift from a formalistic retributive model to a system that is more responsive to the trauma and structural inequality experienced by victims, so that justice is realized not only through the punishment of the perpetrator, but also through comprehensive protection and restoration of the victim's dignity.

From the perspective of victimology, the birth of Law No. 12 of 2022 on the Crime of Sexual Violence represents a significant repositioning of victims who previously tended to be marginalized in the Indonesian criminal law system. This law not only regulates the punishment of perpetrators but also emphasizes recognition of victims' suffering, restoration of dignity, and guarantees of continued protection. This analysis is even stronger when reviewed in conjunction with the theoretical approaches, ranging from classical to modern, in victimology. First, Von Hentig's theory³⁸ which underscores victim vulnerability that is often rooted in social, psychological, and structural conditions, placing victims in a position of vulnerability to sexual violence. This framework helps explain why women, children, and marginalized groups are the primary targets. Secondly, Mendelsohn's approach is crucial in dismantling the practice of victim blaming that still often occurs in legal processes and public discourse. By asserting that victims of sexual violence are never at fault, this theory strengthens the orientation of the Law on Sexual Violence Crimes in favor of unconditional protection for victims.

Third, Stephen Schafer's idea elaborates that responsibility should not be placed on the victim, but rather on legal institutions and the state, which is the primary protector. In the context of the Law on Sexual Violence Crimes, this responsibility is realized through legal assistance mechanisms, protection from intimidation, and institutional sustainable recovery. Fourth, Wolfgang's view³⁹ helps identify situational factors such as power relations, work environment, and digital media that increase the risk of sexual violence.⁴⁰ This theory is relevant to show that acts of sexual violence cannot be separated from the socio-structural context that surrounds them.

As a counterbalance, Menachem Amir's theory⁴¹ Amir's critique of victimology, which in some cases is considered to have the potential to blame the victim, can be used as a counter theory to reject this paradigm. By utilizing Amir's critique, this analysis asserts that the victimology framework should be positioned to protect victims, rather than imposing responsibility on them. Thus, the Law on Sexual Violence Crimes can be understood as a normative transformation that affirms the rights of victims more comprehensively, while firmly rejecting all forms of narratives that blame victims.

The synthesis of five theories of victimology in reading the transformation of Law No. 12 of 2022 on TPKS is in favor of victims, emphasizes special protection for vulnerable groups, rejects the practice of victim blaming, and places the responsibility of recovery on state institutions. In addition, the recognition of situational factors, including digital-based violence, shows a

³⁷ N. T. Arista, D. S., & Herawati, "Pembaruan Hukum Dalam Penanganan Kekerasan Seksual Melalui Undang-Undang TPKS," *Jurnal Hukum Dan Pembangunan* 53, no. 2 (2022).

³⁸ Sandra Walklate, "Victims, Trauma, Testimony," *Nottingham Trent University* 22 (2013): 77-89.

³⁹ Marvin E. Wolfgang, "Victim Precipitated Criminal Homicide," in *Crime and Justice at the Millennium* (Boston, MA: Springer US, 1957), 293-306, https://doi.org/10.1007/978-1-4757-4883-3_19.

⁴⁰ Leah E Daigle, *The Criminal and His Victim: Studies in the Sociobiology of Crime*.

⁴¹ Leah E Daigle.

progressive response to the new dynamics of victimization. By rejecting the victim blaming paradigm, the Law on Sexual Violence Crimes represents a criminal law model that is more humanist, comprehensive, and oriented towards substantive justice for victims of sexual violence.

(c) *Ease of Reporting*

The provisions of Articles 39-41 of Law No. 12 of 2022 on TPKS that guarantee the right of victims to report easily and safely are an essential breakthrough in Indonesian criminal law. The expanded reporting mechanism through the police, service institutions, and the Regional Technical Implementation Unit for Women's and Children's Protection shows a shift from a rigid procedural paradigm towards a legal system that is more adaptive to the needs of victims. This is in line with Nonet and Selznick's responsive law theory,⁴² which emphasizes that the law must be sensitive to social aspirations and needs, rather than simply enforcing norms in a formalistic manner. By providing space for victim participation from the start, the Law on Sexual Violence Crimes presents a more substantive, justice-oriented legal mechanism and overcomes classic obstacles such as trauma and stigmatization.

From a feminist legal theory perspective, this arrangement can be read as an effort to deconstruct legal structures that have been patriarchal and tend to marginalize women's experiences. A victim-friendly reporting system is a legal strategy to erode the practice of victim blaming,⁴³ and gender bias is often encountered in conventional legal processes.⁴⁴ Furthermore, the recognition of safe spaces for victims to report marks a shift toward more victim-centered laws, which acknowledge women's experiences as a crucial foundation in the formulation and implementation of legal policies.

Meanwhile, the theory of victimology offers a critical lens for understanding the significance of this policy. Von Hentig's perspective asserts that victims have inherent vulnerabilities that demand special protection mechanisms. Mendelsohn reinforces the argument that victims should not be blamed for their situation, while Schafer emphasizes the responsibility of institutions to provide safe and supportive reporting mechanisms. Thus, Articles 39-41 not only expand access to justice, but also represent a conceptual transformation of victimology in national legal practice from victims as passive objects to active subjects who are comprehensively protected.

Overall, these findings show that the Law on Sexual Violence Crimes presents a more responsive, gender-just and victim-oriented criminal law paradigm. By combining the principles of responsive law, feminist analysis, and the perspective of victimology, this regulation can be understood as an important foundation for the realization of substantive justice as well as the restoration of the dignity of victims of sexual violence in Indonesia.

(d) *Legal Presence and Recognition of Electronic Evidence.*

The recognition of electronic evidence as valid evidence in cases of sexual violence is a form of novelty as stipulated in Article 24 paragraph (2) letter f of the Anti-Sexual Violence Law. This step responds to the complexity of sexual crimes in the digital era. It fills a void in the

⁴² Nonet and Selznick, *Law and Society in Transition: Toward Responsive Law*.

⁴³ Hengki Firmanda, Ira Ira Sinta Azlina, and Indah Septipah, "Perlindungan Korban Kekerasan Seksual Yang Mengalami Victim Blaming Di Media Sosial Berdasarkan Aliran Realisme Hukum," *Reformasi Hukum* 27, no. 1 (April 30, 2023): 38-49, <https://doi.org/10.46257/jrh.v27i1.489>.

⁴⁴ Nabella Liana Nuraliah Ali, "Legal Protection for Victims of Sexual Violence in Higher Education from a Victimology Perspective," *Journal of Law and Policy in Higher Education (JLPH)* 5, no. 4 (2025): 2766-79, <https://doi.org/https://doi.org/10.38035/jlph>.

Criminal Procedure Code that has not explicitly included forms of electronic evidence. Evidence such as recordings, screenshots, and digital messages is now recognized to strengthen proof, especially in cases that lack physical evidence or witnesses. According to Herawati and Arista (2022)⁴⁵, and the National Commission on Violence Against Women,⁴⁶ This recognition improves access to justice and protects victims from a disproportionate burden of proof. However, its utilization requires both technical competence from legal officers and public education, so that digital evidence can be used legally and effectively in the judicial process.

In criminal procedure law, evidence has a central position as a means to convince the judge of the truth of a criminal offense. According to the negative-wettelijk evidentiary system in KUHAP (Article 183), the judge can only impose a sentence if there are at least two valid pieces of evidence and he/she gain confidence. However, KUHAP rigidly recognizes only five pieces of evidence (witness testimony, expert testimony, letters, instructions, and testimony of the defendant). This poses a serious problem in cases of digital sexual violence that often do not leave physical evidence. Hence, victims are vulnerable to secondary victimization due to an unadaptive evidentiary system.

Law No. 12 of 2022 on TPKS presents a special criminal procedure law update by recognizing electronic evidence (Article 24 paragraph (2) letter f), which explicitly closes the void in the Criminal Procedure Code. From the perspective of the *lex specialis* principle, this is a correction to the limitations of conventional evidence while opening up space for legal adaptation to the dynamics of technology-based sexual crimes. Within the framework of due process of law, electronic evidence also strengthens the victim's right to access to justice by lowering the previously disproportionate burden of proof.⁴⁷

Furthermore, this step is in line with Satjipto Rahardjo's theory of progressive law⁴⁸ which emphasizes law as a means to serve human beings and substantive justice, not just formal texts. The admission of electronic evidence shows that Indonesian criminal law is moving from a legalistic paradigm to a human-centered law paradigm, where legal instruments develop following the real needs of victims and social realities. Thus, procedural law should not be an obstacle, but rather a bridge for restoring the dignity of victims of sexual violence.

Thus, in the framework of the theory of criminal procedure and progressive law, the recognition of electronic evidence in the Law on Sexual Violence Crimes is not just a procedural innovation, but a paradigmatic transformation from a rigid and potentially gender-biased evidentiary system to an adaptive, responsive, and progressive procedural law system, prioritizing protection, participation, and substantive justice for victims of sexual violence in the digital era.

(e) *Community participation*

The Law on Sexual Violence Crimes brings an important novelty by placing community participation as a strategic element in the prevention, handling, and recovery of sexual violence in a holistic manner, as stipulated in Article 90. The community is recognized not only as a legal beneficiary but also as a monitoring actor, reporter, and victim advocate. This role is crucial due

⁴⁵ Arista, D. S., & Herawati, "Pembaruan Hukum Dalam Penanganan Kekerasan Seksual Melalui Undang-Undang TPKS."

⁴⁶ Dewan Perwakilan Rakyat Indonesia, "Naskah Akademik Rancangan Undang-Undang Republik Indonesia Tentang Tindak Pidana Kekerasan Seksual Badan Legislatif."

⁴⁷ Rahmat Efendy Al Amin Siregar, "DUE PROCESS OF LAW DALAM SISTEM PERADILAN PIDANA DI INDONESIA KAITANNYA DENGAN PERLINDUNGAN HAM," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 1, no. 1 (May 31, 2016): 35-46, <https://doi.org/10.24952/fitrah.v1i1.326>.

⁴⁸ A Faisal, "Pemikiran Hukum Progresif Prof. Dr. Satjipto Rahardjo," *International Journal of Cross Knowledge*, 2023.

to its proximity to the reality of victims and perpetrators. Arivia and Subono.⁴⁹ According to the National Commission on Violence Against Women,⁵⁰ this participation remains low and is often hampered by patriarchal cultures that reinforce stigma against victims. Therefore, there is a need to strengthen education, structural support, and state-civil society synergy to ensure public participation becomes an active part of sustainable protection and recovery strategies.

Article 90 of the Law on Sexual Violence Crimes marks a significant reform in Indonesian criminal law by placing the community as a strategic actor in the prevention, handling, and recovery of sexual violence. From the perspective of legal feminist theory⁵¹ This policy can be read as an attempt to deconstruct legal structures that were previously patriarchal and closed off space for public participation. Legal feminist theory emphasizes that laws are not neutral, but rather often reproduce power relations that perpetuate the domination of women. By recognizing civil society as reporters, supervisors, and assistants, the Law on Sexual Violence Crimes opens space for the redistribution of power from a bureaucratic state to more egalitarian public participation. However, structural barriers in the form of a patriarchal culture, stigma against victims, and low public legal literacy, as criticized by Fitha Ayun Lutvia Nitha and the National Commission on Violence Against Women⁵², shows that this transformation still faces cultural resistance.

In the framework of responsive law theory developed by Nonet and Selznick⁵³, The recognition of community participation reflects a legal shift from the repressive law model and legal-formal autonomous law, towards responsive law that emphasizes openness, dialogue, and responsiveness to social needs. The Law on Sexual Violence Crimes is not just a normative tool, but a forum for interaction between the state, society and victims. Public participation is seen as an instrument of social correction to the limitations of the state, so that the law is truly present to serve the needs of victims and prevent systemic violence. However, for this law to be effective, it requires strengthening institutional capacity, protection mechanisms for whistleblowers, and synergy with civil society organizations so that public participation is not symbolic, but substantive.

Thus, through the lens of legal feminism and responsive law, Article 90 of the Law on Sexual Violence Crimes can be understood as a new paradigm that seeks to involve the community as an active legal subject in the fight against sexual violence. This novelty opens up opportunities for a legal system that is more democratic, gender-just, and responsive to the realities of victims. However, its success is largely determined by the extent to which the state is able to challenge patriarchal domination and make community participation a structural element, not just normative rhetoric..

2. Law No. 12 of 2022 on Sexual Violence Crimes; Developments and Characteristics of Sexual Violence Prevention in Indonesia

Regulatory transformation in Indonesia's criminal law system related to combating sexual violence marks a significant paradigm shift. Prior to the enactment of Law No. 12 of 2022 on Sexual Violence Crimes (Anti-Sexual Violence Law), regulations on sexual violence were still

⁴⁹ N. Arivia, G., & Subono, "Kekerasan Seksual Dan Tantangan Penegakan Hukum Di Indonesia.," *Jurnal Perempuan* 26, no. 3 (2021).

⁵⁰ CATAHU, "CATAHU 2023 Komnas Perempuan: Kekerasan Terhadap Perempuan Di Ranah Publik Dan Negara Meningkat."

⁵¹ Triantono, "Feminis Legal Theory Dalam Kerangka Hukum," *Progressive Law and Society (PLS)* 1, no. 1 (2023): 14-26.

⁵² Fitha Ayun Lutvia Nitha et al., "Optimalisasi Implementasi UU TPKS: Tantangan Dan Solusi Dalam Upaya Penghapusan Kekerasan Seksual Di Indonesia," *Masalah-Masalah Hukum* 53, no. 1 (March 30, 2024): 90-100, <https://doi.org/10.14710/mmh.53.1.2024.90-100>.

⁵³ Nonet and Selznick, *Law and Society in Transition: Toward Responsive Law*.

partial and scattered throughout the Criminal Code (KUHP), such as Article 285 which regulates rape and Article 289 related to sexual abuse. These provisions are narrow in definition and have not been able to address the complexity of contemporary sexual violence, which is increasingly diverse, especially forms that do not involve direct physical contact, are gender-based, or occur in the digital space. Therefore, the enactment of the Anti-Sexual Violence Law demonstrates legislative efforts to develop a criminal law framework that is more progressive, victim-centered, and contextual to the social dynamics and humanitarian challenges of the modern era.

The Anti-Sexual Violence Law normatively reflects national legal efforts to build a regulatory system that is more responsive to social dynamics. Komnas Perempuan (2024) notes six main elements in the Anti-Sexual Violence Law: types of sexual violence, criminal sanctions, special procedural law, victims' rights, prevention strategies, and monitoring systems⁵⁴. These elements indicate that criminal law is not only aimed at punishing perpetrators, but also at restoring victims and changing a legal culture that has tended to be patriarchal and perpetrator-centric.⁵⁵

There are 12 types of sexual violence crimes, including physical and non-physical sexual harassment, sexual exploitation, and electronic-based sexual violence (Law No. 12 of 2022, Article 4). Their existence demonstrates the state's recognition of the wide variety of forms of sexual violence and the need for a comprehensive and adaptive criminal law approach. One of the most important characteristics of the Anti-Sexual Violence Law is its victim-centered approach. The Anti-Sexual Violence Law also affirms the rights of victims to legal assistance, recovery, restitution, and social and psychological rehabilitation (Articles 15–19). In addition, protecting the confidentiality of victims' identities is a priority to prevent revictimization. Research by Saefudin et al. reinforces this, showing that the Anti-Sexual Violence Law accommodates the special needs of victims with disabilities through the principles of accessibility and reasonable accommodation.

Conceptually, the Anti-Sexual Violence Law reflects a shift in the criminal law paradigm from a retributive legal-formal approach to a more humanistic and contextual approach. This shift is evident in the provisions of the articles that place victims at the center of legal protection, rather than merely as objects of criminal evidence. For example, Articles 67 to 71 explicitly regulate the rights of victims, including the right to information, assistance, psychological recovery, and restitution, which were not previously accommodated in the Criminal Code. In addition, Articles 73 to 79 emphasize the state's obligation to provide integrated services and systematically prevent sexual violence, indicating that this law is not only oriented toward punishing perpetrators but also toward restoring the dignity of victims and social transformation. This approach shows that the Anti-Sexual Violence Law does not merely add to the list of criminal offenses, but rather builds a legal framework that is more responsive to the complexity of sexual violence as a social and humanitarian phenomenon. This is in line with the theory of combined punishment that combines retributive, preventive, and rehabilitative elements as proposed by Muladi and Barda Nawawi.⁵⁶

⁵⁴ Komnas Perempuan, "Enam Elemen Kunci RUU Penghapusan Kekerasan Seksual: Kenali Dan Pahami," *Nucl. Phys.*, <https://komnasperempuan.go.id/download-file/543>.

⁵⁵ Siti Shalima Safitri, Mohammad Didi Ardiansah, and Andrian Prasetyo, "Quo Vadis Keadilan Restoratif Pada Perkara Tindak Pidana Kekerasan Seksual Pasca Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual (Studi Terhadap Pasal 23 UU TPKS)," *Jurnal Hukum Dan HAM Wara Sains*, 2023, <https://doi.org/10.58812/jhhws.v2i01.173>; Penias Isba, Marius Suprianto Sakmaf, and Jumiran, "Evaluation of Restorative Justice Implementation in Criminal Conflict Resolution: Victim and Offender Perspectives," *DELICTUM : Jurnal Hukum Pidana Islam* 3, no. 1 (September 30, 2024): 14–30, <https://doi.org/10.35905/delictum.v3i1.10736>.

⁵⁶ Muladi dan Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: PT Alumni, 1998).

An important innovation in the Anti-Sexual Violence Law is the recognition of the restorative justice approach, particularly in cases involving child perpetrators (Article 23). The principle of restorative justice is internalized in the form of holistic recovery for victims, including psychological and social recovery. Adelia Wulandari An important innovation in the Anti-Sexual Violence Law is the recognition of the restorative justice approach, particularly in cases involving child perpetrators (Article 23). The principle of restorative justice is internalized in the form of holistic recovery for victims, including psychological and social recovery. Adelia Wulandari⁵⁷ and Andi Faizal⁵⁸ emphasizes that this approach provides victims with the opportunity to regain control over their lives after experiencing sexual violence. Restorative justice theory has emerged as an alternative to conventional punishment models that focus too much on punishing perpetrators. This approach emphasizes the importance of restoring social relationships, strengthening the dignity of victims, and encouraging active participation in the legal process.⁵⁹ Although its implementation is still limited, the existence of these principles in the Anti-Sexual Violence Law shows that the direction of criminal reform in Indonesia is increasingly taking into account the comprehensive needs of victims.

The evidence system in the Anti-Sexual Violence Law presents an important update compared to the evidence system applicable in the Criminal Code and Criminal Procedure Code. The Criminal Code still relies on a traditional approach, where the validity of evidence is highly dependent on conventional evidence such as direct testimony, physical evidence, and confessions from suspects. This model tends to be inflexible in cases of sexual violence that are personal, hidden, or lack strong physical evidence, such as verbal or online-based violence. In contrast, the Anti-Sexual Violence Law broadens the scope of valid and relevant evidence by recognizing non-conventional forms of evidence, such as expert testimony, electronic recordings, autopsy results, and documentation produced through the process of psychological assistance and treatment of victims. This provision is regulated in Articles 24 to 28 of the Anti-Sexual Violence Law, which explicitly states that the victim's experience, including their psychological and emotional condition, can be part of the evidence in criminal proceedings. Thus, the Anti-Sexual Violence Law offers a more progressive and contextual construction of evidence, while reflecting a criminal law orientation that seeks to protect the interests of victims more comprehensively in the face of the complexity of contemporary sexual violence.

Criminal punishment in the latest regulations is also linked to the principles of rehabilitation and social reintegration as contained in Article 51 of the new Criminal Code (Law No. 1 of 2023). The purpose of criminal punishment is not only to deter, but also to restore social balance and encourage perpetrators to take responsibility. Thus, criminal law reform in cases of sexual violence not only represents the development of legal substance, but also a tangible manifestation of a paradigm shift towards a more just, civilized, and victim-centered approach. The following is a brief description of the characteristics of sexual violence prevention in the Anti-Sexual Violence Law.

⁵⁷ Aulia Adelia Wulandari, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Dalam Rangka Mewujudkan Keadilan Restorative Justice," *Proceedings Series on Social Sciences & Humanities* 17 (July 30, 2024): 176-80, <https://doi.org/10.30595/pssh.v17i.1119>.

⁵⁸ Andi Faizal Muzayin, Catur Alam Pinandang, and Diandra Kis Arumpuspita Rois, "Pemenuhan Hak Korban Tindak Pidana Kekerasan Seksual Dikaitkan Dengan UU TPKS," *Ranah Research: Journal of Multidisciplinary Research and Development* 6, no. 6 (2024): 2957-63, <https://doi.org/10.38035/rrj.v6i6.1211>.

⁵⁹ Nani Susilowati, Nurini Aprilianda, and Faizin Sulistio, "Concept of Restorative Justice in Criminal Acts of Sexual Violence with Child Perpetrator and Victims," *Varia Justicia* 18, no. 2 (November 24, 2022): 114-26, <https://doi.org/10.31603/variajusticia.v18i2.7847>; Adelia Wulandari, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Dalam Rangka Mewujudkan Keadilan Restorative Justice."

Table 1: Development and Characteristics of the Anti-Sexual Violence Law in Combating Sexual Violence

Aspect	Before the Anti-Sexual Violence Law (Old Criminal Code)	After the Anti-Sexual Violence Law (Law No. 12 of 2022)	Source
Definition of Sexual Violence	Restricted: only covers rape and molestation	Scope: 12 types of sexual violence, including exploitation and electronic-based violence	Anti-Sexual Violence Law Article 4
Regulatory Orientation	Focus on perpetrators and evidence	Victim-centered; recognition of the right to recovery and protection	Anti-Sexual Violence Law Articles 15-19
Policy Elements	Unstructured	There are six policy elements: offenses, criminal sanctions, procedural law, victims' rights, prevention, and monitoring.	National Commission on Violence Against Women
Fulfilling Victims' Rights	Not explicitly regulated in the Criminal Code	Regulated in detail: rights to information, assistance, rehabilitation, restitution, and confidentiality of identity	Anti-Sexual Violence Law Articles 67-71
Punishment System	Legal-formal retributive	Combination: retributive, preventive, rehabilitative; humanistic and contextual	Anti-Sexual Violence Law Articles 4 and 5 (Retributive), Articles 20-22 (Preventive), Articles 15-19 and Articles 67-71 (Rehabilitative), Articles 73-79 (Humanistic and Contextual)
Restorative Justice	Not accommodated	Psychological and social recovery, prioritizing victim recovery.	Anti-Sexual Violence Law Article 23.
Evidence system	relying on conventional evidence such as direct testimony, physical evidence fisik, dan pengakuan tersangka.	recognizing non-conventional forms of evidence, such as expert testimony, electronic recordings, autopsy reports, and documentation produced through the process of counseling and psychological treatment of victims.	Articles 24-28 of the Anti-Sexual Violence Law

3. Harmonization of Islamic Legal Values in Regulations on Sexual Violence Prevention in Indonesia

The principle of Maqaashid Syariah serves as an ethical and moral framework in the formation of national law that aims to protect the five main aspects of human life: *ḥifẓ al-dīn* (religion), *ḥifẓ al-nafs* (soul), *ḥifẓ al-ʿaql* (intellect), *ḥifẓ al-nasl* (progeny), and *ḥifẓ al-māl* (property). In the context of sexual violence, maqāsid values offer a conceptual instrument for assessing the appropriateness and legitimacy of criminal regulations, not only from the aspect of formal legality, but also from the perspective of protecting human dignity and safety holistically. Sexual violence is a multidimensional form of violation: it damages the victim's soul, threatens the integrity of offspring, and wounds honor as a manifestation of *ḥifẓ al-ʿird*. Therefore, the values of maqāsid are important as a reference in formulating regulations that are not only repressive but also transformative and restorative within a framework of harmonization. Harmonization is not achieved by replacing the national legal system, but by incorporating the values of maqaashid as the ethical foundation in the formulation of legal norms..

The urgency of integrating Islamic legal values into national regulations, particularly through the principle of Maqaashid Syariah, is a contextual and sociological necessity that cannot

be ignored in the Indonesian legal system.⁶⁰ As a country with a Muslim majority, Islamic values have shaped the collective legal consciousness of society, not only as an expression of religion, but also as a source of moral and social legitimacy in law enforcement. In cases of sexual violence, a purely technocratic legal approach is insufficient to address the complexity of trauma and vulnerability experienced by victims. Therefore, maqāshid al-sharī'ah becomes relevant as an approach that emphasizes substantive justice, social restoration, and protection of life.

Research by Jauhari⁶¹ shows that although efforts to integrate Maqaashid Syariah have been made in several regulations, its implementation is still limited and influenced by local factors, schools of thought, and political-legal dynamics. Therefore, a systematic and participatory approach is needed in harmonization, so that Islamic values are not merely present as symbols but as substantive foundations in the formation of just legal norms. In this case, the Anti-Sexual Violence Law can be an initial model for the integration of Sharia values in modern criminal regulations, while maintaining the principles of legal pluralism and constitutionality. This kind of harmonization not only strengthens the legitimacy of the law in the eyes of the Muslim community, but also encourages the transformation of criminal law towards a more humanistic system oriented towards the public interest.

The integration of Islamic legal values, particularly Maqaashid Syariah, into the Anti-Sexual Violence Law is substantially reflected in the formulation of norms oriented towards the protection and recovery of victims as legal subjects. The principles of *ḥifz al-nafs* (protection of life) and *ḥifz al-nasl* (protection of offspring) are implemented through the regulation of victims' rights as stipulated in Articles 15 to 19 of the Anti-Sexual Violence Law. These provisions include the right to physical and mental protection, the right to accompaniment, medical, psychological, and legal services, which are explicitly designed to ensure the safety, dignity, and sustainability of victims' lives as a whole. The strengthening of aspects of recovery and restorative justice for victims of sexual violence is enshrined in Articles 67 to 71, which regulate mechanisms for restitution and rehabilitation. This reflects a legal approach that is not merely retributive toward perpetrators but also responsive to the suffering and rights of victims, in line with the Maqaashid Syariah, which prioritizes social welfare as the primary objective of sharia law. In this context, protection of the continuity of future generations (*ḥifz al-nasl*) is an important component of the reconstruction of criminal law that is inclusive and oriented toward social recovery.

The state's responsibility in the recovery and protection of victims of sexual violence is affirmed in Articles 73–79 of the Anti-Sexual Violence Law, which requires the provision of integrated services in the form of prevention, reporting, legal assistance, and psychological assistance as a concrete form of protection of life (*ḥifz al-nafs*) and efforts to avoid revictimization. These provisions reflect the principle of maqāshid al-sharī'ah that the law must function as an instrument of justice and sustainable welfare. This approach is further clarified in Article 23, which regulates the limited application of restorative justice in line with the principle of *taṣarruf al-imām 'ala al-ra'iyah manūṭun bi al-maṣlaḥah*, meaning that legal policies must be designed based on the public interest. In the tradition of Islamic law, the welfare-based restoration model does not eliminate sanctions, but is oriented toward moral balance, social restoration, and collective protection of the honor and soul of the victim in a sustainable manner.

⁶⁰ Efik YUSDiansyah, Rusli K. Iskandar, and Jejen Hendar, "Maqashid Syariah as a Basis for Establishing Decree in Indonesia," *KnE Social Sciences*, October 30, 2023, <https://doi.org/10.18502/kss.v8i18.14267>.

⁶¹ Jauhari Jauhari, "Penerapan Prinsip Maqashid Syariah Dalam Undang-Undang Di Indonesia," *Karimiyah* 4, no. 1 (June 4, 2024): 1–14, <https://doi.org/10.59623/karimiyah.v4i1.49>.

Table 2 Integration of Maqaashid Syariah in the Anti-Sexual Violence Law

Maqaashid Sharia Aspects	Articles in the Anti-Sexual Violence Law	Legal Substance	Forms of Islamic Value Integration
<i>hifz al-nafs</i> (protection of life)	Article 15–19	Victims' rights to physical and mental protection, legal assistance, recovery, and restitution	Guaranteeing the safety of victims and trauma recovery as the basic values of sharia protection Preventing family breakdown and ensuring the continuity of future generations through a welfare-based approach
<i>hifz al-nasl</i> (hereditary protection)	Article 67–71	Restitution and rehabilitation mechanisms for victims and families	Maintaining the dignity of victims through a psychological-based evidence system and restoration of dignity Providing public education and psychosocial support based on mental recovery and public legal awareness
<i>hifz al-'ird</i> (protection of honor)	Articles 24–28, 15 (paragraph 2)	Evidence requirements include psychological testimony; protection of victim identity and privacy	The state is given the authority to make legal policies based on social welfare and the ongoing protection of victims.
<i>hifz al-'aql</i> (mental protection)	Articles 73–79	The state's obligation to provide integrated services, education, and systematic prevention of sexual violence	
<i>taṣarruf al-imām bi al-maṣlaḥah</i> (public interest-based legal policy)	Articles 23	Limited recognition of restorative justice approaches for child offenders	

Based on the description and table above, researchers can explain that the harmonization of Islamic law in regulations on sexual violence is not carried out formally, but rather through a normative and functional synchronization approach. Normatively, Islamic values are absorbed into the substance of the law through the principles of justice, protection, and restoration. Functionally, regulations such as the Anti-Sexual Violence Law adopt procedural and service mechanisms that reflect Sharia values, such as protection of honor and elimination of revictimization. This model allows Islamic law to function as a filter and reinforcer of national legal norms without causing systemic conflict.

The integration of Maqaashid Syariah into national regulations such as the Anti-Sexual Violence Law provides stronger social legitimacy to criminal law, especially among Muslims. This broadens public acceptance of regulations and encourages the transformation of law from a repressive approach to a more humanistic and value-based approach. This harmonization also strengthens the position of Islamic law as a source of values in a pluralistic national legal system, as emphasized by the theory of the existence of Islamic law in Indonesian legislation.

4. Normative Paradigms That Have Not Been Put Into Practice: Challenges in Implementing Values and the Best Interests of Victims in the Anti-Sexual Violence Law

Although various provisions in Law No. 12 of 2022 concerning Sexual Violence Crimes (Anti-Sexual Violence Law) have accommodated the values of maqaasid al-shari'ah, this integration process is not yet completely free from obstacles and weaknesses that require critical attention in future criminal law reforms. The continuing strength of the normative paradigm, which has not yet touched the practical level, poses a challenge to the implementation of maqaashid values and the best interests of victims in the Anti-Sexual Violence Law. Such as recognition of the right to recovery, protection of identity, use of electronic evidence, and a trauma-sensitive procedural law approach. Normatively serves as the basis for guaranteeing protection for victims has not been consistently manifested. A concrete example can be seen in reports from the National Commission on Violence Against Women and the Indonesian Commission for Victims of Crime, which recorded a surge in requests for victim protection, but many regions do not yet have a UPTD PPA that functions optimally,⁶² Even law enforcement officials are still reluctant to use the Anti-Sexual Violence Law due to a lack of understanding and incomplete derivative regulations.⁶³

Another obstacle faced is the uneven understanding of the substance of the law among law enforcement officials and policymakers. Komnas Perempuan notes that many officials still use articles of the Criminal Code in handling cases of sexual violence, even though the Anti-Sexual Violence Law has been passed as *lex specialis*. A concrete example occurred in a case of sexual violence in Jombang, where the police and prosecutors used the Anti-Sexual Violence Law, but the panel of judges handed down a verdict based on the Criminal Code, resulting in the perpetrator only being sentenced to five months in prison. This inconsistency indicates that understanding of criminal elements, proof mechanisms, and victim-centered approaches has not been fully grasped uniformly by all legal actors, directly impacting the effectiveness of victim protection and the restoration of justice.

Looking at the situation Indonesia faces in realizing the best interests of victims, we can learn from countries such as Sweden and the United Kingdom, which have systematically implemented a victim-centered approach to justice.⁶⁴ Sweden, for example, defines sex without consent as rape, and supports victims through a victim-friendly reporting system and trauma-informed training for law enforcement officials.⁶⁵ The role of victim advocates in Sweden emphasizes empowerment and emotional support to reduce secondary victimization.⁶⁶ The UK has a Revenge Porn Helpline that helps victims remove intimate content from the internet and provides online legal and psychological counseling.⁶⁷ Strategic steps that Indonesia can adopt include: (1) expanding training for law enforcement officials based on the values of justice for

⁶² Perempuan Komnas, "Catatan Tahunan Komnas Perempuan Tahun 2023," *Catatan Tahunan*, 2023.

⁶³ Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (May 31, 2022): 170-96, <https://doi.org/10.14710/jphi.v4i2.170-196>.

⁶⁴ John T. Chu, "A Systems Science Approach to Crime, Criminal Justice, and Victim Justice," in *To Be a Victim* (Boston, MA: Springer US, 1991), 117-40, https://doi.org/10.1007/978-1-4899-5974-4_8.

⁶⁵ Caitlin P. Carroll, "Reinvestigating the Sexual Violence 'Justice Gap' in the Swedish Criminal Justice System: Victim-Centered Alternatives to the Criminal Trial," *Feminist Criminology* 18, no. 1 (January 24, 2023): 45-64, <https://doi.org/10.1177/15570851221077673>.

⁶⁶ Caitlin P. Carroll, "Accessing Rights and Mitigating Revictimization: The Role of the Victim's Legal Counsel in the Swedish Criminal Justice System," *Violence Against Women* 28, no. 1 (January 12, 2022): 255-76, <https://doi.org/10.1177/1077801220988341>.

⁶⁷ Zico Junius Fernando et al., "Revenge Porn: Digital Crimes and Implications for Victims," *Kosmik Hukum* 23, no. 2 (May 10, 2023): 157, <https://doi.org/10.30595/kosmikhukum.v23i2.18542>.

victims and *maqashid syariah*; (2) establishing community-based integrated service centers; and (3) developing a secure and inclusive digital reporting system. Harmonization between legal norms and institutional practices must be encouraged through synergy between the state, civil society, and the media to ensure that the Anti-Sexual Violence Law truly becomes an instrument of substantive justice for victims.

The challenges in implementing Law No. 12 of 2022 on Sexual Violence Crimes (Anti-Sexual Violence Law) can be seen from a structural perspective, particularly the absence and imbalance of service institutions at the regional level. Many Regional Technical Implementation Units for the Protection of Women and Children (UPTD PPA) have not yet been established or lack facilities, experts, and supporting budgets. This directly impacts the fulfillment of victims' rights as guaranteed by the law. On the other hand, subsidiary regulations such as Government Regulations and Presidential Regulations needed to operationalize substantive provisions have not been fully finalized, creating a legal vacuum that hinders cross-sectoral coordination and the effective delivery of recovery services.

In the cultural sphere, patriarchy and stigma against victims are still deeply rooted in society and the legal system. Instead of receiving assistance, victims are often treated with bias, blamed, or questioned about their motives for reporting. This is despite the fact that the Anti-Sexual Violence Law emphasizes a victim-centered approach that demands sensitivity to trauma and the right to comprehensive recovery. This conservative legal culture creates resistance to adopting new approaches, so that officials still use the Criminal Code as the main reference in assessing criminal elements, even though the Anti-Sexual Violence Law is *lex specialis*. This kind of paradigm shift requires transformative legal education and training based on the values of justice.

Technically, gaps in the mastery of digital evidence and legal procedures pose significant obstacles. Many officials lack the skills to manage and evaluate electronic evidence such as digital recordings or screenshots, which are key instruments in cases of technology-based sexual violence. Additionally, the absence of an integrated online reporting system and limited data integration between agencies makes the legal process inefficient and prone to losing evidence. To overcome this, Indonesia can learn from cross-sector training systems such as those in the UK, which integrate Digital Evidence Training into the curriculum for police and prosecutors, and provide a secure and standardized reporting platform. Without improvements in these structural, cultural, and technical aspects, the noble goals of the Anti-Sexual Violence Law in bringing justice and recovery to victims will remain purely normative.

V. Conclusion

In analyzing Law No. 12 of 2022 on Sexual Violence Crimes, this study found that the process of its formation reflected a long and complex political contestation. The legislative process, which lasted for more than a decade, showed the dynamics between ideological resistance and normative demands for the protection of victims of sexual violence. The shift in orientation from a retributive approach to victim-based justice marks a structural reform in the criminal justice system, while also emphasizing the importance of civil society participation and advocacy in influencing national policy direction.

The second finding shows that the substance of the Anti-Sexual Violence Law not only regulates the types of crimes and sanctions, but also establishes a comprehensive legal system and victim recovery mechanism. This regulation opens space for the integration of Islamic legal values, particularly the principles of *maqāsid al-sharī'ah* such as *ḥifẓ al-nafs*, *ḥifẓ al-'ird*, and

taṣarruf al-imām bi al-maṣlahah, which are substantively reflected in the regulation of victims' rights, assistance procedures, and legal policies based on public interest. This harmonization shows that the Anti-Sexual Violence Law has the potential to be an ethical, inclusive, and contextual legal instrument in Indonesia's pluralistic legal system.

However, the realization of the objectives of the Anti-Sexual Violence Law still faces significant implementation challenges, both from structural, cultural, and technical aspects. The absence of integrated service institutions in a number of regions, weak coordination between institutions, and incomplete derivative regulations are crucial structural obstacles. On the other hand, the dominance of patriarchal paradigms and the bias of officials towards victims show that the normative values that have been formulated have not fully touched legal practice in the field. Therefore, strengthening trauma-based training, developing inclusive service infrastructure, and integrating maqāṣid values into legal education are strategic steps to ensure the effectiveness of the Anti-Sexual Violence Law as an instrument of protection and equitable recovery.

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