


Legal Analysis of Witness and Victim Protection in Cases of Sexual Violence Crimes

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Article Info	ABSTRACT
<p>Keywords: Sexual Violence, Criminal Justice, Witnesses and Victims</p>	<p>Cases of sexual violence are a serious issue that requires special attention in the criminal justice system, especially in relation to the protection of witnesses and victims. This protection is important to guarantee the rights of victims and support a fair and just law enforcement process. This study aims to analyze the legal aspects of witness and victim protection in the context of sexual violence in Indonesia. The method used is a normative juridical study with a legislative approach and a review of court decisions. The results of the study show that although there are regulations governing the protection of witnesses and victims, such as the Witness and Victim Protection Law, the implementation of such protection still faces various obstacles, including the psychological problems of victims, social stigma, and limited protection facilities. Therefore, there is a need to improve the understanding of law enforcement officials, support facilities, and more comprehensive policies to realize effective protection for witnesses and victims of sexual violence crimes. This study is expected to serve as a reference for policymakers and legal practitioners in strengthening legal protection mechanisms for witnesses and victims.</p>
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INTRODUCTION

Sexual violence crimes in Indonesia remain one of the most pressing issues to be addressed. The high number of reported cases of sexual violence indicates that legal protection for witnesses and victims is still inadequate. This is often due to various factors, including a lack of public understanding of the rights of witnesses and victims, as well as the inadequacy of the protection mechanisms provided by the existing legal system. Legally, Indonesia has legislation aimed at protecting witnesses and victims of sexual violence crimes. For example, Law No. 31 of 2014 on the Protection of Witnesses and Victims and Law No. 12 of 2022 on Sexual Violence Crimes. However, the implementation of these laws often faces various obstacles, both in terms of legal procedures and the support provided by law enforcement agencies.

Based on data from the National Commission on Violence Against Women (Komnas Perempuan), the number of reports of sexual violence has increased every year. The 2023 Komnas Perempuan Annual Report noted that there were more than 289,111 cases of sexual violence reported (Komnasperempuan, 2024). And this is just the tip of the iceberg,

considering the large number of unreported cases for various reasons, including shame, fear of social stigma, and distrust of the judicial system. Indeed, in addition to enacting the Law on Sexual Violence Crimes, Indonesia also has Law No. 31 of 2014 on the Protection of Witnesses and Victims (UUPSK), which is one of the main pillars of this legal framework. This law provides guarantees of protection for witnesses and victims, including physical, psychological, and social protection. Additionally, this law also regulates the rights of witnesses and victims to receive compensation, restitution, and rehabilitation services.

However, the implementation of the UUPSK often faces various obstacles. Complicated legal procedures, lack of coordination between law enforcement agencies, and insufficient resources to provide adequate protection are some of the main problems that are often encountered. (M. Chaerul Risal, 2022). This causes many witnesses and victims to feel unprotected and reluctant to continue with legal proceedings. Therefore, despite the existence of strong legal instruments, the implementation of legal protection for witnesses and victims of sexual violence in Indonesia is still far from perfect.

One of the biggest challenges is the inability of the judicial system to provide effective protection. Many victims who report sexual violence experience revictimization, which is experiencing trauma a second time when they face legal proceedings. This revictimization can occur due to a lack of sensitivity on the part of law enforcement officials, exhausting legal procedures, and a lack of psychological support during the legal process.

Case studies can provide a realistic picture of how the legal protection system for witnesses and victims of sexual violence works in practice. One relevant case study is that of a female student who was raped and chose to commit suicide in Mojokerto (BBC, 2021). The reason is that the student had reported the sexual assault she experienced to the police, but she faced various obstacles during the legal process. Maria was intimidated by the perpetrator and his family, who tried to silence her so she would not continue with the legal process. Although the student received protection from the police afterwards, these threats still made her feel unsafe. Additionally, Maria also faced stigma from her community, which caused her to feel isolated and depressed.

At first glance, in the case of the female student mentioned above, it appears that the legal protection provided by the criminal justice system is still insufficient to guarantee the safety and welfare of victims. A more comprehensive approach and better coordination between the various institutions and parties involved in the victim protection process are needed. Thus, reflecting on the case of the female student, in order to overcome these problems, reforms are needed in the criminal justice system (Sagala, 2022). One step that can be taken is to introduce special training for law enforcement officials on handling cases of sexual violence. This training should cover the legal, psychological, and social aspects of sexual violence, so that law enforcement officials can handle these cases more sensitively and effectively (Ahsinin et al., 2014). The following studies on the protection of witnesses and victims in cases of sexual violence have been conducted by legal and criminology experts. According to (Primasari et al., 2018), Legal protection for witnesses and victims is a crucial element in the criminal justice system, serving to ensure that they not only receive justice but also security during the legal process.

Research by (Burn, 2019) emphasizes the importance of psychological and social support for victims of sexual violence, which often determines their courage to report and testify. Additionally, other studies indicate that the effectiveness of the judicial system is highly dependent on the professionalism and sensitivity of law enforcement officials in handling cases involving sexual violence (Jennings et al., 2021). In the Indonesian context, for example, several studies show that witness and victim protection still requires significant improvement. Research by (Saefudin et al., 2023) reveals that despite a strong legal framework, implementation is often hampered by bureaucracy and a lack of coordination between law enforcement agencies.

Therefore, by understanding the basis of this research and linking it to several other studies that are also skeptical about the enforcement of laws protecting sexual violence crimes, particularly the protection of witnesses and victims, the direction of this problem formulation is as follows:

1. What are the legal mechanisms for protecting witnesses and victims in cases of sexual violence crimes?
2. What is the role and function of the judicial system in providing protection to witnesses and victims in cases of sexual violence crimes?

Furthermore, with this problem formulation, this study aims to: (1) Analyze the legal mechanisms for the protection of witnesses and victims in cases of sexual violence in Indonesia; (2) Assess the role of judicial institutions in providing protection to witnesses and victims in cases of sexual violence; and Identify the obstacles faced in implementing legal protection for witnesses and victims and provide recommendations for improvement.

This study aims to analyze legal protection for witnesses and victims in cases of sexual violence, identify obstacles in its implementation, and provide recommendations to strengthen protection mechanisms so that the rights and safety of witnesses and victims are optimally fulfilled in the judicial process.

METHOD

This research was designed using a normative juridical method. Legal writing is a process of discovering legal rules, concepts, principles, and doctrines in order to answer the legal issues being studied. As a normative writing, the emphasis of this writing is more on bibliography, to search, examine, and research the data obtained during the writing process. The research data consists of primary legal materials sourced from applicable laws and regulations related to sexual violence crimes. Secondary data consists of textbooks and scientific journals from previous research obtained from various sources, both national and international. The data obtained is verified and analyzed descriptively and analytically.

RESULTS AND DISCUSSION

Legal Mechanisms for the Protection of Witnesses and Victims in Cases of Sexual Violence

In many discussions and literature, criminal law is always associated with 'retribution'. This means that criminal law is indeed intended to punish a crime that is collectively considered to be a 'crime'. Philosophical debates always revolve around the idea that every crime committed

by every individual must receive the same punishment as the crime itself. This claim is at least supported by Hayman Groos' argument that crime is morally wrong, and punishment for it is morally right (crime is morally wrong, and punishment for every crime is morally right) (Bakhri, 2011).

However, as the law continues to evolve rapidly, legal practices have also undergone significant changes, particularly in the process of prosecuting criminal offenses. Criminal law is no longer limited to merely punishing individuals who have committed crimes, but also ensures that victims are safer, especially when human rights become a standard for the enforcement of criminal law, where not only are the rights of victims protected, but the rights of perpetrators are also worthy of protection. Moreover, in the global legal landscape following the end of World War II, there has been a strong emphasis on restoring hope for vulnerable and marginalized communities, including dismantling the patriarchal system that has long objectified women as second-class citizens compared to men (De Kretser, n.d.).

With the drastic changes above, countries that have made law a progressive breakthrough, in line with the establishment of a democratic system as a recognition of society, have always promoted protection, especially protection for women who are always vulnerable to exploitation, abuse, rape, violence, and even murder (IJRS, 2022). Specifically, in every case where women are victims, Indonesia has explicitly addressed this issue in its legal framework. In Indonesian positive law, the term "morality" is used to defend the dignity of women. This is evident in the Criminal Code, where criminal offenses related to morality can be categorized as follows (Auli, 2023):

1. a person who exposes themselves in public (also known as exhibitionism);
2. a married couple engaging in indecent acts in public;
3. a young couple embracing in public in such a way as to arouse sexual desire in those who see them.

The purpose of regulating sexual offenses in the Criminal Code is essentially to protect the moral values that exist in society, and not merely to protect women or other parties who are victims of rape or other forms of sexual violence (Lumingkewas, 2016). In other words, sexual offenses encompass various behaviors that violate the norms of decency and morality accepted in society. The Indonesian Criminal Code provides a clear legal framework for addressing various forms of sexual offenses. The definition of sexual offenses may include acts such as adultery, rape, sexual assault, pornography, and prostitution.

However, over time, the articles on decency in the Criminal Code have often been criticized by women's activists for being inadequate in protecting the rights of victims, especially women. Some of the main criticisms that have led to the call for specific autonomous regulations include: (1) The Criminal Code, which tends to measure public morality using the principle of decency, is biased and misguided. Sexual violence that occurs is always unrelated to the morality of society, which is driven by certain power relations. (2) The Criminal Code does not address the fundamental issue that violence against women arises from the construction of patriarchal norms, which are embedded in cultural, religious, and even political dogma; and (3) violence against women is not limited to physical acts but also includes non-physical acts that, unconsciously, serve as the starting point for violence

against women.

In addition, the articles in the Criminal Code tend to focus more on punishing perpetrators without giving adequate attention to the needs and rights of victims. Protection for victims, such as legal, psychological, and medical assistance, is often neglected. Women's activists argue that an effective legal system must prioritize the protection and recovery of victims. In fact, the Criminal Code does not specifically adopt a gender-sensitive approach in handling cases of sexual violence. Many women who are victims of sexual violence face cultural and social barriers when reporting crimes. A legal process that is not gender-sensitive can exacerbate the trauma experienced by victims and prevent them from seeking justice. As a result, these criticisms have prompted women's activists to push for specific, autonomous, and more comprehensive regulations to protect victims of sexual violence. One outcome of this push is the enactment of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS).

Many parties recognize that addressing sexual violence cannot rely solely on a criminal law approach. A more comprehensive approach is needed that includes victim protection, psychological recovery, legal assistance, and preventive measures. The TPKS Law was designed to fill this gap by providing a more comprehensive mechanism for addressing sexual violence from various aspects. According to data from the National Commission on Human Rights (Komnas HAM), as cited by (Nurisman, 2022), there are at least 15 key considerations when identifying an act of sexual violence, which can be strengthened within the legal framework of the TPKS Law. These 15 points are as follows:

1. Rape;
2. Sexual intimidation, including threats or attempted rape;
3. Sexual harassment;
4. Sexual exploitation;
5. Trafficking of women for sexual purposes;
6. Forced prostitution;
7. Sexual slavery;
8. Forced marriage, including suspended divorce;
9. Forced pregnancy;
10. Forced abortion;
11. Forced contraception and sterilization;
12. Sexual torture;
13. Inhuman and sexually-based punishment;
14. Traditional practices of a sexual nature that are harmful or discriminatory to women;
and
15. Sexual control, including through discriminatory rules based on morality and religion.

Furthermore, in an Academic Paper on the TPKS Law, the definition of sexual violence is combined into three criteria, namely: rape, sexual exploitation, and human trafficking, although it does not specifically mention sexual purposes (Nurisman, 2022).

A gender-sensitive approach is a key element of the TPKS Law that distinguishes it from the Criminal Code. Handling cases of sexual violence often requires a deep understanding of gender dynamics and the psychological impact experienced by victims. The

TPKS Law adopts this approach by ensuring that the legal process takes into account the needs and rights of victims. In addition, the TPKS Law ensures that victims receive protection throughout the legal process. This includes protection from threats or intimidation by perpetrators or other parties, as well as the provision of a safe place for victims during the trial. Courts are also given the authority to use technology such as video conferencing to take statements from victims who are unable to appear in court due to security or trauma concerns.

On the other hand, the TPKS Law not only provides a safe space for victims and witnesses, but the criminal procedure mechanism within the judicial context also guides the case process to be more victim- and witness-centered. Law No. 12 of 2022 on Sexual Violence Crimes establishes the concept of the Integrated Criminal Justice System for Handling Cases of Violence Against Women (SPPT-PKKTP) (Nova & Elda, 2022). Concretely, the integrated judicial framework is as follows (Nova & Elda, 2022):

Table1. Revision of Legal Provisions Concerning Victims in the Law on Sexual Violence Crimes

No ASPECT	TPKS Law	KUHAP
1. Specific requirements Investigators, public prosecutors, and judges handling sexual violence cases	Article 21: "Investigators, prosecutors, and judges must meet the following requirements: they must have integrity and competence in handling cases involving human rights and victims; they must have undergone training related to sexual violence crimes. If they have not, the cases must be handled by investigators, prosecutors, and judges who are experienced in such matters."	None
2. Prohibition of attitudes that demean victims	Article 22: "Investigators, public prosecutors, and judges shall examine witnesses, victims, suspects, and defendants. They must uphold human rights, honor, and dignity, without intimidation, without justifying mistakes, without victimizing the way of life and morality, and without asking questions that are provocative or traumatic."	None
3. Restorative justice cannot be implemented	Article 23: "TPKS cases cannot be settled outside of court except in cases involving child perpetrators."	

No ASPECT	TPKS Law	KUHAP
4. Evidence and Proof	<p>Article 24: "In addition to the five types of evidence specified in the Criminal Procedure Code, evidence in TPKS cases consists of: victim statements, psychological reports, clinical/psychiatric/mental health specialist reports, medical records, forensic examination results, and bank account examination results."</p> <p>Article 25: "The testimony of witnesses and/or the victim is sufficient to prove the defendant's guilt, provided it is accompanied by one valid piece of evidence. The defendant's family may provide testimony as witnesses. In cases where witness testimony is obtained solely from the victim, it may be supported by testimony from individuals who can provide information related to the TPKS, even if they did not personally witness, hear, or experience the events themselves."</p>	<p>The Criminal Procedure Code is in accordance with the provisions of Article 184. Article 183 of the Criminal Procedure Code stipulates a minimum of two pieces of valid evidence.</p>
5. Assistance for Victims and Witnesses	<p>Article 26: "Victims shall be accompanied by a companion at all levels of examination. Companions include: LPSK officers, UPTD-PPA, health workers, psychologists, social workers, social welfare workers, psychiatrists, advocates, paralegals, etc."</p>	<p>Nothing is regulated for victims, only for perpetrators.</p>
6. Restitution	<p>Articles 30, 31: "Victims of sexual violence crimes are entitled to restitution, including: compensation for loss of property/income, compensation directly related to the sexual violence crime, compensation for psychological and medical treatment costs, and other compensation as a result of the sexual violence crime."</p>	<p>The Criminal Procedure Code only regulates restitution for compensation due to wrongful arrest, detention, prosecution, or trial without grounds based on the law. This is not for victims but for perpetrators.</p>

No	ASPECT	TPKS Law	KUHAP
7.	Reporting	<p>Article 39 paragraph 1: "Victims or persons who know, see and/or witness incidents of sexual violence shall report them to the UPTD PPA, UPTD in the social sector, community-based services, or the police, either at the location of the victim or at the location where the crime occurred."</p> <p>Article 41 paragraph 4: "When the victim submits a report directly to the police, the police are obliged to receive the report in a special service room that guarantees the safety and confidentiality of the victim."</p>	Not regulated
8.	Investigation	<p>Article 52: "In cases where the witness and/or victim of a sexual crime is a child, investigators may conduct electronic recording or direct examination remotely using audiovisual equipment."</p> <p>Article 55: "Investigators are authorized to create electronic data and/or systems related to crimes of sexual violence so that they cannot be accessed except for judicial proceedings."</p>	Not regulated
9.	Prosecution	<p>Article 56: "The public prosecutor may conduct preliminary meetings with witnesses and/or victims after the suspect and evidence have been handed over. These meetings may be conducted electronically and accompanied by a legal representative and/or family members and investigators."</p> <p>Article 57: "In describing facts and acts related to sexuality, the public prosecutor shall, as far as possible, avoid overly detailed, vulgar, and excessive descriptions in the indictment, while still ensuring that the description is clear, complete, and accurate."</p>	Not regulated

No ASPECT	TPKS Law	KUHAP
10.Examination at the Court Hearing	<p>Article 60: "The examination of witnesses and/or victims shall be conducted with respect for human rights, without intimidation, without justifying wrongdoing, and without questioning their lifestyle, morals, or sexual experiences with questions that are irrelevant or unrelated to the crime of sexual violence."</p> <p>Article 61: "The court shall endeavor to provide the necessary facilities and protection so that witnesses and victims can give testimony."</p> <p>Article 62: "The judge may order the institution providing assistance to replace the assistant at the request of the victim, family, or guardian of the victim."</p> <p>Article 63: "The judge shall consider the victim's recovery in the decision."</p>	Not regulated

Based on the table above, the handling of sexual violence cases during the investigation, prosecution, and trial stages is carried out in accordance with the TPKS Procedure Law itself, which distinguishes it from other legislative products, unless otherwise specified in this law: Investigators, Public Prosecutors, and Judges are based on the provisions of Article 21 (Nova & Elda, 2022).

Although the TPKS Law is a step forward, its implementation still faces various challenges. One of the biggest challenges is the lack of understanding and awareness of this law among law enforcement officials and the public (Nova & Elda, 2022). Many law enforcement officials have not received adequate training on the TPKS Law and how to apply it in cases of sexual violence. Stigma and discrimination against victims of sexual violence remain a major problem. Victims are often reluctant to report the violence they have experienced because they fear social stigma or not being believed. Therefore, efforts to change public perceptions and eliminate this stigma are very important. In addition, the availability of adequate resources to support the implementation of the TPKS Law is also a challenge. Many regions do not yet have integrated service facilities for victims of sexual violence, and government budgets are often insufficient to support the necessary programs.

The Role of Judicial Institutions in Providing Protection to Witnesses and Victims in Cases of Sexual Violence

Sexual violence has become a serious problem affecting many countries around the world. Although efforts have been made to prevent and combat sexual violence, this phenomenon still occurs in various forms and across all levels of society. One important aspect in handling cases of sexual violence is the role and effectiveness of the judicial system

in providing protection to witnesses and victims. The judicial system has the primary responsibility of enforcing the law and providing justice to victims of sexual violence (Sari et al., 2023). In this context, protecting witnesses and victims is a top priority so that the legal process can proceed fairly and transparently. This paper aims to investigate the role and effectiveness of the judicial system in providing protection to witnesses and victims in cases of sexual violence.

The primary role of judicial institutions in cases of sexual violence is to carefully collect evidence and thoroughly investigate each case. Careful evidence collection and in-depth investigation are key to upholding justice and avoiding legal errors. According to research conducted by the International Journal of Evidence & Proof in 2018, (M. Chaerul Risal, 2022), the success of evidence collection and investigation has a direct correlation with the success rate of prosecuting sexual violence cases. Therefore, judicial institutions must ensure that evidence collection and investigation procedures are carried out professionally and accurately.

The judiciary also has a responsibility to provide clear information and support to victims and witnesses throughout the legal process. This includes explaining legal procedures, their rights as victims or witnesses, and providing assistance in accessing support and assistance services. A study conducted by the Journal of Criminal Law & Criminology in 2019 showed that victims of sexual violence often feel confused and do not understand the legal process they are going through (Nur Khumaeroh, 2023). Therefore, it is important for the judicial system to provide clear information and appropriate support to victims and witnesses.

At the same time, the judiciary's success in protecting victims and witnesses of sexual violence can also be measured by its success in enforcing the law and imposing appropriate penalties on perpetrators. Strict and fair enforcement of the law can be an effective deterrent to sexual violence. According to data published by The Lancet in 2019, there is still uncertainty in the application of the law to cases of sexual violence in some countries (Simamora, 2023). Some perpetrators of sexual violence often escape punishment or receive sentences that are not commensurate with the crimes they have committed. Therefore, it is important for the judicial system to ensure that the law is enforced firmly and fairly for all parties involved.

The handling of sexual violence cases in Indonesia faces many complex problems. One of them is the low number of reports of sexual violence victims. Data collected by the Ministry of Women's Empowerment and Child Protection shows that only a small fraction of sexual violence cases are reported to the authorities. Stigma, pressure from the perpetrator or their family, and victims' lack of trust in the judicial system are some of the causes (Baehaki & Hadis, 2023). Additionally, there are also issues in the investigation process and evidence collection. Some cases of sexual violence face difficulties in obtaining sufficient evidence to strengthen the case in court. This occurs because law enforcement officials lack training and resources, as well as a lack of cooperation between institutions handling sexual violence cases.

The Indonesian criminal justice system actually handles sexual violence cases relatively well, although there are still some challenges that need attention. One of these is increasing law enforcement awareness of sexual violence issues. Organizations such as the police and prosecutors have conducted training and outreach on handling sexual violence cases. This

has improved the understanding and skills of legal officials in handling these cases (Sulistiani, 2023). Additionally, there are also efforts to improve the system that protects witnesses and victims of sexual violence. To make witnesses and victims feel safe and supported during the legal process, some judicial institutions offer support and assistance, such as legal counseling and counseling. Although there has been some progress, there is still room for improvement in the handling of sexual violence cases by the criminal justice system in Indonesia. One effort that can be made is to improve accessibility to the justice system for victims and witnesses. This can be done by providing easily accessible information and assistance services, as well as establishing safe and confidential reporting mechanisms (Waluyo, 2022). In addition, legal and policy reforms are also needed to strengthen protection for victims and witnesses of sexual violence. This includes expanding the definition of sexual violence in the law, increasing penalties for perpetrators of sexual violence, and strengthening protection mechanisms for victims and witnesses.

CONCLUSION

Based on the above explanation, the author ultimately concludes at least two things: First, this study found that the legal mechanisms for witnesses and victims in cases of sexual violence face a number of challenges. Although there are explicit regulations in criminal law and other legislation that provide protection, the implementation and enforcement of the law is often inconsistent. The implementation of the law is often hampered by various factors such as a lack of resources, a lack of understanding of the specific needs of witnesses and victims, and a lack of coordination between relevant institutions. Second, the role of judicial institutions is very important in providing protection to witnesses and victims in cases of sexual violence. These institutions are not only tasked with enforcing the law and prosecuting perpetrators, but also have a responsibility to ensure the safety, welfare, and basic rights of witnesses and victims during the legal process. However, this study shows that there is an urgent need to increase understanding and awareness among law enforcement officials about the importance of protecting witnesses and victims of sexual violence and implementing best practices in this regard.

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