

## **Comperative Legal Analysis Regarding Efforts To Prevent Sexual Violence And Legal Protection For Women In The Credit And Law Number 12 Of 2022 Concerning Actions Criminal Sexual Violence**

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### **Abstract**

*Sexual violence is a criminal act which basically requires very strict law enforcement. The dimensions of sexual violence regulated in the Criminal Code are not yet able to fully regulate the forms of sexual violence that occur, where regulations related to sexual violence are regulated in articles 281-295 of the Criminal Code which have limited clarification. on rape and molestation. So, with the enactment of law number 12 of 2022 concerning criminal acts of sexual violence (UU TPKS) on May 9 2022, it becomes the new legal basis for enforcing criminal acts of sexual violence. The TPKS Law becomes a specialist Lex for regulations previously contained in the Criminal Code. The presence of the TPKS Law is a new positive law that provides clear and specific updates regarding the types of criminal acts that are classified as criminal acts of sexual violence, the rights of victims of criminal acts of sexual violence, as well as protection for victims of criminal acts of sexual violence in law enforcement. The formulation of the problem in this research is how to compare legal regulations and legal protection between the Criminal Code and Law number 12 of 2022 regarding criminal acts of sexual violence. This research uses normative juridical research methods, using secondary data sources, with primary legal materials in the form of related laws which are supported by secondary legal materials in the form of related books and journals. Based on the results of this research, the research results will be summarized as to what the position of victims is. criminal acts of sexual violence which are in the Criminal Code and Law no. 12 of 2002 which regulates different legal provisions and legal protection which in the Criminal Code is not clearly regulated regarding legal protection for victims of criminal acts of sexual violence which in law number 12 of 2002 is clearly regulated regarding the protection of victims and prevention efforts against the occurrence of criminal acts of sexual harassment.*

**Keywords:** *Comparative Law, Legal Protection, Sexual Violence*

## **INTRODUCTION**

The right to a sense of security is a mandate of the Constitution of the Republic of Indonesia, this is contained in Article 28G of the second amendment to the 1945 Constitution paragraph (1) which states the right of every person to protect themselves, their family, honor, dignity and property, as well as the right to a sense of security and protection from the threat of fear of doing or not doing something. Legal protection is a constitutional right which is also protected by the state and guaranteed constitutionally by the 1945 Constitution. Legal protection for victims of criminal acts, including the rights of victims, is an absolute thing that must be taken into account in the legal policies that will be made. Victims of criminal acts are the main parties who should receive protection. When a crime occurs, the party who experiences the most severe suffering is the victim, but the protection they receive is no better than that received by the perpetrator.

In resolving criminal cases, victims of criminal acts are placed as witnesses as well as providing evidence, which makes it less likely for victims to freely fight for their rights. Providing protection to victims of criminal acts of sexual violence is a form of implementation of the principle of recognition and protection of human dignity which is based on Pancasila and the principles of the rule of law based on Pancasila. In the criminal justice system, the position

of the victim is regulated through the Criminal Procedure Code (KUHAP), contained in Articles 98-101 of the Criminal Procedure Code. The regulations contained in the Criminal Procedure Code regarding legal protection in the context of sexual violence still contain a number of shortcomings. Then the presence of Law Number 31 of 2014 concerning Witness and Victim Protection, hereinafter referred to as the PSK Law, became the new legal basis for providing protection to victims. Legal protection of the rights of victims of criminal acts is an absolute thing that must be taken into account in the legal policies that will be made. However, in this law there is no specific regulation regarding legal protection for victims of criminal acts of sexual violence.

Sexual violence can happen to anyone, both men, women and even children, which is a big concern in society. According to M. Tholchah Hasan, as quoted by Abdul Wahid, he defines sexual violence as deviative sexual behavior or deviant sexual relations, where this behavior will harm the victim and destroy peace in society and result in suffering for the victim who needs attention. Sexual violence is an act carried out through coercion and violence in carrying out the desired sexual contact, where this criminal act not only attacks the victim physically, but also attacks the victim mentally and psychologically. The community can participate in preventing, assisting, recovering and monitoring criminal acts of sexual violence. Community participation in prevention is realized by: a. to cultivate literacy about the Crime of Sexual Violence among all levels of society to prevent the occurrence of Crimes of Sexual Violence and not become victims or perpetrators; b. socialize the laws and regulations governing the Crime of Sexual Violence; and c. create environmental conditions that can prevent the occurrence of criminal acts of sexual violence.

Family participation in preventing criminal acts of sexual violence is realized by: a. strengthening education in the family, including moral, ethical, religious and cultural aspects; b. build quality communication between family members; c. build emotional ties between family members; d. strengthen the role of father, mother and all family members so that protective character is developed; e. protect and prevent family members from being influenced by pornography and access to information containing pornographic elements; and f. protect family members from negative environmental influences and promiscuity.

Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) which is the new legal umbrella for handling criminal acts of sexual violence. The TPKS Law was passed on May 9 2022 through the 2022 State Gazette Number 120. This law is a *lex specialis* for the Criminal Code and various laws and regulations that have been in force so far. The presence of this law is considered to be a very adequate legal basis for handling criminal acts of sexual violence, which in the Criminal Code only regulates punishment for criminal acts of sexual violence in general. With the promulgation of the TPKS Law, legal certainty is guaranteed and legal needs in society are met because it not only contains material law, but also contains formal law at the same time. The reform in the TPKS Law lies in qualifying the types of criminal acts of sexual violence as well as the existence of other criminal acts which are also stated as criminal acts of sexual violence firmly, the existence of comprehensive procedural legal regulations, confirmation regarding the rights obtained by victims, and not Usually the resolution is through restorative justice except for child perpetrators.

The needs and rights of victims have not been protected comprehensively. That is why the TPKS Law was passed, namely Law no. 12 of 2022 so that the needs and rights of victims of sexual violence are properly accommodated. Before the advent of the TPKS Law, criminal law focused more on punishing perpetrators of criminal acts and neglected to provide adequate protection for victims, and did not focus on guaranteeing the rights of victims of criminal acts of sexual violence. The birth of the TPKS Law is a form of the state in protecting citizens where every citizen has the right to obtain protection and the birth of the TPKS Law is a form of the

state in protecting citizens where every citizen has the right to obtain protection and be free from torture or other abusive behavior. can degrade human dignity as mandated by the 1945 Constitution of the Republic of Indonesia. Sexual violence is also considered to be contrary to Pancasila as the basis of the state, which is contrary to divine and human values and can disrupt security and order in society. The presence of the TPKS Law was also driven by the absence of a law that specifically regulates sexual violence that occurs.

The same definition regarding protection is also explained in the TPKS Law and the PSK Law. In this law, protection is also defined as efforts made to fulfill victims' rights and provide assistance to victims with the aim of creating a sense of security for victims. The TPKS Law comes with regulations regarding sexual violence rights which are stated firmly and comprehensively in Articles 68 to 70 of the Sexual Violence Crime Law which regulates treatment, protection and recovery for victims of sexual violence crimes. By regulating the rights of victims of crimes of sexual violence in the Law on Crimes of Sexual Violence, it is a guide for law enforcement officials in providing the protection that victims of crimes of sexual violence should receive. Legal protection for victims of crimes of sexual violence has been regulated in Articles 42 to Article 47 of the Sexual Violence Crime Law. Article 7 of the TPKS Law states that every victim of a crime of sexual violence has the right to receive treatment, protection and recovery from the moment the crime of sexual violence occurs. This is the state's obligation to fulfill the victim's rights in accordance with the condition and needs of the victim after the crime has occurred.

The victim's right to protection is regulated in Article 69 of the Sexual Violence Crime Law where victims have the right to receive information related to their rights and facilities while receiving protection, the right to have access to information related to the implementation of protection, the right to be protected from threats and violence so as to avoid a recurrence of violence. , the right to have one's identity kept secret, the right to be protected so as not to be degraded by the attitudes and behavior of law enforcement officials, the right to be protected so as not to lose one's job, job transfer, education or political access, as well as the right to be protected so as not to be criminally prosecuted or civilly sued for reported criminal acts of sexual violence. The presence of Law no. 12 of 2022 Crime of Sexual Violence; to become a new positive law that presents clear and specific updates regarding the types of criminal acts that are classified as criminal acts of sexual violence, the rights of victims of criminal acts of sexual violence, as well as protection for victims of criminal acts of sexual violence in law enforcement

## **RESEARCH METHODS**

The nature of the research used by the author in writing this law is descriptive analysis because this research describes in detail the social phenomena that are the subject of the problem. A descriptive study is intended to provide as precise data as possible about people, conditions or other symptoms. The type of legal research is judicious empirical, which, in other words, is a type of sociological legal research and can also be called field research, namely studying applicable legal provisions and what happens in reality in society. Then, the researcher also determined the data collection method used in this research. Interviews are used as a data collection technique if the researcher is going to carry out a preliminary study to find problems that must be researched, and also if the researcher wants to know things from sources in more depth, which in this case The researcher conducted an interview with the traffic head of the Binjai Police. Lastly, as in normative legal research, the researcher also takes a case approach, where the researcher will take a social problem that occurs in society and then build a legal

argumentation construction based on previous logic and legal approaches to see to what extent the relationship between previous approaches and concrete conditions in the field.

This research uses normative legal research methods which are part of the doctrinal research typology. The research approach used is a conceptual and statutory approach. The source of data obtained in this research was obtained from secondary data obtained indirectly, which was a literature study and the secondary data was divided into several parts, namely, primary legal materials and secondary legal materials and treasury legal materials. Primary legal materials are data that have legal force, such as statutory regulations, while secondary and treasury legal materials are supporting data on primary legal materials such as previous research that discusses research that is currently being written and has been published and related books. The legal material that has been obtained is then analyzed using descriptive-qualitative analysis to obtain conclusions that can be scientifically justified regarding the comparative analysis of efforts to prevent sexual violence and legal protection for women in the Criminal Code and the criminal act of sexual violence Law number 12 of the year 2022

## RESULT AND DISCUSSION

Regarding the definition of sexual violence itself, based on article 1 paragraph 1 of the criminal law on sexual violence, it is stated that sexual violence is any act of degrading, insulting, attacking, and/or other acts against a person's body, sexual desires, and/or forced reproductive function. contrary to someone's will, which causes that person to be unable to give consent in a free state, because of unequal power relations and/or gender relations, which results in or could result in physical, psychological, sexual suffering or misery, economic, social, cultural and other losses. political. Sexual violence itself is a form of sexual harassment. By having a detailed understanding of sexual violence, it is hoped that there will be no misconceptions about whether a case is classified as sexual violence or not in the future. This definition is aimed at anything that contains elements of sexual violence so that there is clarity in the future. There are several types of sexual violence based on the provisions contained in the TPKS Law no. 12 of 2022.

These types are contained in Article 4 paragraph (1) of the Sexual Violence Crime Law, namely non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Apart from the types contained in paragraph (1), there are other types of violence in paragraph (2), namely rape, obscene acts, sexual intercourse with children, obscene acts against children, sexual exploitation of children, acts which violate decency as seen from Article 1 paragraph (1) of the Sexual Violence Crime Law (TPKS Law No. 12 of 2022).

In social life, legal protection is very necessary because legal protection can support the rules that have been agreed upon by society, in this case, as is known in social life, there are norms that apply, one of which is legal norms where these norms can provide sanctions directly. concrete violations committed, this aims to safeguard and protect the community from actions that are not in accordance with the agreed rules in society. The role of the community is also very important in preventing criminal acts of sexual harassment, because criminal acts of sexual harassment can occur because of the surrounding community. Sexual harassment or violence is a sexual act carried out against a victim under conditions of coercion. Sexual assault is usually a crime committed by adults and usually occurs against women. The existence of legal protection is an effort to protect the government or administrators through applicable laws and regulations. The aim of legal protection is to ensure that legal subjects obtain their rights and can provide full protection to legal subjects who are victims. Philipus M Hadjon defines legal protection as an

action to protect the human dignity of individuals and recognize human rights based on statutory provisions regarding activities arbitrary or a rule that can protect something.

Several legal instruments to prevent and deal with harassment, namely in the Criminal Code (KUHP) the term sexual harassment is not recognized, but it is known as obscene acts. What is meant by acts of obscenity in the Criminal Code are all activities related to crimes of immorality in the form of acts that violate the norms that exist in society. Perpetrators of sexual harassment can be charged with obscenity as regulated in articles 289 to 296 of the Criminal Code. In Law no. 12 of 2022 concerning (TPSK) also regulates the rights of every person to obtain protection from degrading treatment, preventive measures and recovery for victims of sexual harassment where this law acts as a legal umbrella in the event of a criminal act of sexual violence. Article 1 paragraph (1) also explains the definition of sexual violence, namely all activities that contain elements of criminal acts that are fulfilled as regulated in this Law as well as other sexual acts that are regulated in law as long as they are not stipulated in this law. . There are 10 important points stated in this law regarding forms of sexual violence listed in article 2 paragraph (1), including.

- a. Rape
- b. Obscene acts
- c. Sexual intercourse, obscene acts, and/or sexual exploitation of children
- d. Acts that violate decency are against the wishes of the victim
- e. Pornography involving children or pornography that explicitly contains violence and sexual exploitation.
- f. Forced prostitution
- g. The criminal act of trafficking in persons is designated for exploitation
- h. Sexual violence outside the household
- i. The crime of money laundering which originates from the crime of sexual violence and
- j. Other criminal acts which are expressly stated to be criminal acts of sexual violence which are regulated in statutory regulations.

There are several factors that influence the occurrence of sexual violence, including the following: Family factors. The majority of victims of sexual violence are children from broken homes or families that are not intact, as well as those who are affected by economic difficulties and unfavorable environmental conditions. As well as parental divorce, the family also plays a role in triggering sexual harassment. Environmental factors: Degrading sexual behavior can also be caused by unfavorable environmental factors. Apart from that, we often observe how many children today are involved in unethical promiscuity, daring to act beyond their control. It could also be because of the support he received from his friends. As a result, we must be careful when interacting with other people, be able to choose pleasant environments, and choose friends or family members who we can trust. Individual factors. This factor is caused by the child's own personality from an external perspective, namely being easily provoked by other people's words, being too dependent on adults and participating in promiscuity, while from an internal perspective it occurs due to bad environmental and family factors, resulting in discomfort and looking for an outlet.

Basically, a criminal act is an act where the impact of the act gives rise to legal responsibility and legal sanctions related to the act that violates the law. Criminal acts which are acts that violate legal provisions often involve other humans as victims of these unlawful acts. Protection for victims of criminal acts in the criminal justice system is regulated in Articles 98 to 101 of the Criminal Procedure Code. However, the regulations in the Criminal Procedure Code are only limited to combining cases. However, in Law no. 12 of 2022 concerning (TPSK) also regulates the rights of every person to receive protection from degrading treatment, preventive

measures and recovery for victims of sexual harassment where this law acts as a legal umbrella in the event of a criminal act of sexual violence.

In Law no. 12 of 2022 concerning TPKS (Criminal Sexual Violence) also explains the government's efforts to tackle sexual harassment against women, namely in articles 79 to article 84 in article 79 paragraph (1) explaining that "The Central Government and Regional Governments are obliged to carry out the Prevention of Criminal Acts Sexual Violence quickly, comprehensively and integratedly." So, with this law, it is hoped that a public space that is friendly, especially to women and children, can be created.

## CONCLUSION

Based on the results of research related to the juridical review of the judge's decision regarding the civil liability of the head of the National Defense Agency for land and building rights disputes, Case Study Case Number: 249/ Pdt.G/2023/PN/Mdn. It can be concluded as follows: Victims of criminal acts of violence in Article 1 of Law Number 12 of 2022, criminal acts of sexual violence are stated as all forms of criminal acts that meet the criteria for criminal acts. Victims of criminal acts of sexual violence have the right to receive restitution and recovery services, apart from that, victims of criminal acts of sexual violence have the right to receive justice due to physical, psychological and other economic losses obtained from perpetrators of criminal acts of sexual violence through judicial institutions. adjudicate cases related to criminal acts of sexual violence based on Law no. 12 of 2022.

Law number 12 of 2022 and the Criminal Code regulate the application of the law to protect victims of criminal acts of sexual violence, as follows: Specifically for all forms of sexual violence, law number 12 of 2022 regulates several types of criminal acts of sexual violence, such as sexual exposure. non-physical and physical sexual exposure by regulating the types of criminal acts, where this law and the Criminal Code were formed to prevent and protect victims of criminal acts of sexual violence. Help protect and restore victims of law number 12 of 2022 regulating the rights of criminal acts of sexual violence, regulates restitution and recovery in the application of the Criminal Code, procedural law regulates regulations for protection, access to justice and restoration of victims' rights. And Law number 12 of 2022 is a law that regulates changes to law number 12 of 2011 concerning the formation of laws. Meanwhile, Law No. 1 of 2023 is the Criminal Code of the Criminal Code. In the context of protecting and preventing criminal acts of sexual violence, a comparison between the two laws can include aspects such as the definition of criminal acts of sexual violence, the penalties given, and related legal procedures, but with the creation of Law No. 12 of 2022 becomes the *lex specialis* for the Criminal Code, because the Criminal Code is a general aspect of all criminal acts.

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