

# Construction of Criminal Acts of Sexual Violence Based on Criminal Laws Sexual Violence

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**Abstract.** The study aims to evaluate the implementation of law enforcement in cases of sexual violence based on the Republic of Indonesia's Law No. 12 of 2022 on Crimes of Sexual Violence, and to characterize the criminal law policies within this law. A normative approach was used, utilizing secondary data from traditional and internet literature searches, and qualitative data analysis was conducted. The findings indicate that Law No. 12 of 2022 is the primary and first special law that addresses criminal acts of sexual violence and addresses obstacles to law enforcement based on legal substance. It is an example of criminal law reforms that combine punitive and non-punitive measures to address all components of the legal system, including its substance. The law has started to be applied in cases of sexual violence, with the judges' panel in the Malang Court case awarding the perpetrator further criminal reparation. If the convicted person fails to make restitution, their property may be seized and sold at auction to cover the debt. The study highlights the efforts made to enforce the law in cases of sexual violence and the measures taken to address the legal challenges associated with such crimes.

**Keywords:** Implementation, Sexual Violence. Victim

## 1 Introduction

Sexual violence is a type of violence that can occur both in the public and domestic spheres. The legal subjects for perpetrators of sexual violence are usually women and children who are often considered weak victims. A value system that places women as weak and inferior compared to men causes sexual violence to occur frequently against women[1,2].

Every year the number of cases of sexual violence, especially against women, continues to increase. Currently there are also growing cases of sexual violence that occur in cyberspace. There have been 2,500 cases of violence against women in the period from January to July 2021. This figure exceeds the record for violence that occurred in 2020, namely 2,400 cases.

Legal arrangements related to sexual violence already exist, however, in terms of legal substance, they are still very limited and regulated in several separate regulations[3,4]. Material law related to sexual violence is generally regulated in Chapter XIV of the Criminal Code regarding crimes against decency.

The ratification of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence has an important meaning for strengthening regulations regarding the treatment and responsibility of the state to prevent, handle cases of sexual violence, and comprehensively recover victims. Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence is a law that is pro-victim. Through this law, law enforcement officials finally have a legal umbrella or legal standing that so far has not existed to handle every type of sexual violence case[5,6].

The form of criminalization in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence is aimed at protecting women from becoming victims of violence. Acts that are criminalized in laws outside the Criminal Code show a tendency for the state's control over the activities and civil liberties of citizens to become stronger. The choice to regulate the behavior and civil liberties of citizens through criminalization is a common thing practiced by various modern countries, including Indonesia.

The process of criminalization by the state must be carried out in accordance with the limits of the criminal law's ability to deal with crime. Criminal law cannot be used to regulate an act which can be effectively regulated by other fields of law. Criminalization is not used if methods outside of criminal law are preventively able to prevent crimes and prohibited acts from occurring. The formulation of the problem in this study is:

1. What is the criminal law policy in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence?
2. How is the implementation of law enforcement for criminal acts of sexual violence based on the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence?

## **2. Method**

This kind of investigation is done at libraries. The process of performing library research involves reading secondary data from the literature as the foundation for the investigation and searching for laws and other relevant books. This research uses library research since it only deals directly with sources that are already in the library or ready-to-use data, as well as secondary data. It does not deal directly with field data or through eyewitnesses in the form of events. used.

A normative approach was taken in this investigation. The normative approach is a literature-based strategy that emphasizes the evaluation of both primary and secondary legal resources. This study employs a normative method since it seeks to provide a thorough justification that is systematic, clarifies, and corrects a rule of law controlling a specific area of law.[7–9].

Secondary data were the source for the research's data. Data sources that indirectly supply information to data gatherers, such as through other individuals or documents, are known as secondary data sources. Because it includes primary legal sources as well as secondary and tertiary legal materials, this study uses secondary data as its primary source of information.

Traditional and online literature searches served as the method for gathering study data. Traditional methods of doing literature searches include searching the library's collection, buying books and journals, and participating in scientific events (seminars). A search engine is used to conduct online searches for items on the internet. Because it is important for establishing a theoretical foundation by studying and researching books, rules and regulations, papers, reports, archives, and other research findings both printed and electronic relevant to the object of study, this study uses traditional and online library search strategies.

The research's approach of data analysis is qualitative. The goal of qualitative data analysis is to comprehend phenomena relating to what research subjects experience, such as behavior, perceptions, motivations, actions, and others, holistically and through verbal and linguistic descriptions, in a specific setting that is natural and with the aid of natural methods. Because the data will be presented in a narrative-descriptive style rather than as figures or numbers, this study uses qualitative data analysis.

### **3. Results and Discussion**

#### **3.1. Criminal Law Policy in the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence**

Sexual abuse must be prohibited because it violates people's rights, is a crime against humanity, and is a kind of prejudice. In accordance with Article 1 Paragraph (1) of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence, criminal acts of sexual violence are all acts that meet the criteria for criminal acts as prescribed by this law, as well as other acts of sexual violence as prescribed by the law, provided that they are not specifically prohibited by this law. The main and first special rule in combating criminal acts of sexual violence will be Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence. It will also be a supplement to statutory regulations that previously regulated the content of criminal acts of sexual violence.[10,11].

In order to effectively prevent and treat victims of sexual violence, the Law of the Republic of Indonesia No. 12 of 2022 concerning Crimes of Sexual Violence regulates the prevention of all types of criminal acts involving sexual violence, the treatment, protection, and restoration of victims' rights, coordination between the central and local governments, and international cooperation. In order to promote an environment free from sexual violence, community involvement is also controlled in the prevention and healing of victims.

The Law of the Republic of Indonesia Number 12 of 2022 Concerning the Crime of Sexual Violence makes four (four) ground-breaking points, which are as follows: (1) In addition to defining the type of crime of sexual violence, other crimes that are expressly stated as crimes of sexual violence as regulated in other statutory provisions; (2) There are comprehensive procedural regulations beginning with the stages of investigation, prosecution, and examination at court he (3) The state is required to fulfill the victim's right to treatment, protection, and recovery ever since the sexual violence crime was committed, and this is done in accordance with the victim's circumstances and needs; (4) With the exception of minor perpetrators, situations of criminal sexual assault cannot be addressed outside of the court system.[12–14].

Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence is a manifestation of reforms carried out with politics or criminal law policies that target all sub-systems (especially substance) of the legal system. When viewed from the law enforcement factor, law enforcement efforts against sexual violence should continue to be monitored, evaluated, and updated to adapt to the times. Meanwhile, if it is related to legal factors, then the legal substance needs to be revised. Likewise with law enforcement factors and facilities. If it is less than optimal and or inadequate, then it needs to be renewed. In addition, it cannot also let go of the role of society and culture in this matter. These two things play a role in shaping the public's view of cases of sexual violence.

In order to address the difficulties in enforcing the law on the basis of legal substance, the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence is currently in place. Criminal policy in the broadest sense refers to Law of the Republic of Indonesia Number 12 of 2022 regulating Crimes of Sexual Violence. This is based on Prof. Sudarto's definition of criminal policy, which states that it can be understood in three ways: 1) broadly, referring to the overall principles and procedures that serve as the foundation for responses to legal violations manifested as crimes; 2) broadly, referring to the overall function of the law enforcement apparatus, including the operations of the courts and the police; and 3) broadly, referring to the entire policy.[15,16].

Criminal policies in an effort to tackle crime have two means, namely penal and non-penal means. Penal means are carried out through efforts to enforce criminal law (criminal law policies), while non-penal means are through efforts outside of criminal law enforcement. Criminal law policies must be used systematically by going through several stages, namely: 1) The formulation stage, namely the stage of drafting or making laws. Also known as the legislative policy stage; 2) The application stage, namely the stage of application of criminal law by law enforcement officials starting from the police to the courts. also known as the applicative policy stage; 3) The execution stage, namely the actual implementation of criminal punishment by criminal apparatus. Also called the executive or administrative policy stage.

The formulation stage is the initial stage and forms the basis for the implementation of the next two stages. At this stage, legislators are required to formulate three things in the legal arrangement, in the form of criminal acts, criminal and criminal liability, the three of which are the main elements in criminal law policy. Elements of a crime are prohibited acts; the element of criminal responsibility is a person who violates the prohibition; and the criminal element is a form of punishment (penalty) which is threatened to those who violate the prohibition.

It should be noted that referring to the Academic Paper of the Draft Bill on the Elimination of Sexual Violence, the drafters formulated four main points to have an impact on the protection of women and children (women and children are vulnerable groups) from sexual violence. These four main points include: 1) Changes in the perspective, mindset, and behavior of the state and society towards sexual violence as a crime against human dignity, not as an act of decency; 2) Prevention of sexual violence must start from tracing the root causes of sexual violence, namely the imbalance in the position of women's relations which is more subordinate than the position of men in the construction of society which is sometimes perpetuated by the state; 3) Changes in the legal construction that places the victim's experience as a basis for recognizing the type of sexual violence as a crime, the importance of protecting and fulfilling the rights of victims, and the punishment of perpetrators; and 4) Changes in the legal system, especially procedural law, including evidence that makes it easy for women and child victims to get access to justice.

Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence combines penal and non-penal means in it. Penal means are used to deal with criminal acts of sexual violence. This means that the nine types of crimes of sexual violence and several crimes that include crimes of sexual violence have been criminalized. Criminalization is an act or determination by the authorities regarding certain actions which are considered by the community or groups of people as an act that can be punished as a criminal act or to make an act into a criminal act and therefore can be punished by the government by working on its behalf. This also covers various policies that are oriented towards three main issues in criminal law, namely: (1) criminal acts (acts that are against the law), (2) criminal responsibility (mistakes or perpetrators), and (3) crimes or punishment ( various alternative sanctions, both criminal and action). This includes adding (increasing) criminal sanctions to existing criminal acts.

The existence of the criminalization of the nine forms of criminal acts of sexual violence is a new breakthrough to fill the void in the criminal law to tackle the problem of sexual violence. This regulation is a compass for the State of Indonesia in taking steps to deal with criminal acts of sexual violence, starting from prevention, handling, to recovery for victims of criminal acts of sexual violence. Apart from that, the presence of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence completes and perfects various similar arrangements that have previously been partially regulated and scattered in several laws and regulations.

The nature of the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence is specific (*lex specialis*) to various laws and regulations that have been in effect so far because the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence regulates special norms for problem of sexual violence. Its formulation is in accordance with national legal politics and is aimed at realizing national ideals, namely the welfare and security of society in general, and citizens who are vulnerable to becoming victims of sexual violence in particular.

Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence also establishes a new legal structure in the form of a criminal justice system called an integrated criminal justice system for handling cases of violence against women. This system is part of the special nature of this law. This system is an integrated system that shows the process of linkages between agencies or authorities dealing with cases of sexual violence and easy and affordable access to services for victims in every judicial process of sexual violence cases. The hope is to become a mechanism that is able to bring access to justice closer to crimes of sexual violence, to minimize the process of going back and forth between law enforcers in handling the case concerned, and avoiding the victimization of victims who defend themselves by attacking the perpetrators.

The enactment of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence has had a positive impact on society. Among them is that the public will be more courageous in reporting their cases, both to service agencies and to law enforcement agencies. The emergence of this courage is based on the improvement of laws and policies as well as the availability of services, human resources and legal infrastructure that are adequate, of good quality and have the perspective of victims and human rights. This makes the entire system presented under this law provide security and comfort for both victims and their families as well as witnesses and reporters. The availability of legal systems, policies and services that are safe and comfortable and have a victim's perspective and human rights is one of the factors that increases the courage and ability of the community to report cases of sexual violence they experience.

Another positive impact of its implementation is the establishment of a community-based integrated service system in an effort to prevent and handle cases of sexual violence. Later the implementation of Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence will not only increase public knowledge and understanding of criminal acts of sexual violence, but also mobilize potential support and services from the closest community to be involved in the prevention, treatment and recovery of victims. The public's right to obtain adequate information, to be involved in prevention, treatment and recovery programs, will be specifically guaranteed and protected by Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence, even the right to protection not to be reported back for carrying out their responsibilities as a society. Indirectly, the community is mobilized based on their awareness, which is done voluntarily and works together to create a family, village or sub-district, and community environment that is anti-crime of sexual violence or does not tolerate criminal acts of sexual violence.

### **3.2. Implementation of Law Enforcement of Sexual Violence Crimes Based on Law of the Republic of Indonesia Number 12 of 2022 concerning Sexual Violence Crimes**

The actual issue with law enforcement is the potential influences on it (law enforcement itself). These components have a neutral connotation, thus their substance determines whether

they have a positive or negative effect. Legal factors, law enforcement factors (gakum officials), facilities and facilities factor, community factors, community factors, and cultural elements are the five (five) aspects that affect law enforcement. The five elements mentioned above play a role in law enforcement efforts to combat sexual assault crimes. From the standpoint of the legal system, there are still structural flaws that make law enforcement attempts to combat crimes of sexual violence appear to be subpar. To address all legal sub-systems, from legal content to legal structure to legal culture, systemic reforms must be implemented. The response is provided in this part by Law of the Republic of Indonesia Number 12 of 2022 about Crimes of Sexual Violence.

Considering Crimes of Sexual Violence, Law of the Republic of Indonesia Number 12 of 2022 has traveled a long road. Due to the alarming rise in cases of sexual assault against women, Law of the Republic of Indonesia No. 12 of 2022 Concerning Crimes of Sexual Violence was created. This concept was also inspired by the enormous number of sexual assault allegations that went unresolved since there was no legal framework that could comprehend and have the necessary knowledge regarding sexual assault.

The high rate of sexual violence against women in Indonesia is just the tip of the iceberg when it comes to the thousands of incidences of sexual assault that take place there each year. An unequal relationship between the attacker and the victim frequently leads to sexual assault. The offender frequently abuses the authority that is at their disposal to pressure and threaten the victim into complying with their demands. Victims are pushed and under pressure to provide consent to the offenders who threaten them as a result of this quasi-relationship imbalance.

Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence is a special provision (*lex specialist*) of the Criminal Code that regulates criminal acts of sexual violence that are not totally covered by the Criminal Code. The primary crimes and extra crimes that differ from the Criminal Code are both defined as crimes by Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence. Additional criminal threats are also formulated in Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence. These additional criminal threats include deprivation of profits from criminal acts, special coaching, revocation of custody rights, revocation of certain permits, revocation of political rights, revocation of position or profession, and announcement of judges.

The prevention of all forms of criminal acts of sexual violence is governed by Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence, which includes provisions for the treatment, protection, and restoration of victims' rights, coordination between the federal government and local governments, and international cooperation. In order to foster a free environment, the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence also governs community involvement in victim healing and prevention. In accordance with Law of the Republic of Indonesia Number 12 of 2022 Concerning Crimes of Sexual Violence, nine (9) different types of sexual violence are now considered crimes, including (a) non-physical sexual harassment; (b) physical sexual harassment; (c) forced sterilization; (d) forced marriage; (e) forced contraception; (f) forced exploitation; (g) forced sex slavery; and (h) electronic-based sexual violence.

Women who have experienced sexual assault might benefit from a number of provisions in Law of the Republic of Indonesia Number 12 of 2022 concerning Violent Crimes. The benefits include easier access for sexual assault victims to present evidence of sexual assault, fines and penalties for coercing sexual contact, increased punishments for sexual assault offenders, and victims' rights to compensation and recovery assistance.

As an illustration, consider the case in which the Malang District Court Panel of Judges

condemned JE to 12 (twelve) years in jail and a fine of Rp. 300 million, or a subsidiary of 3 (three) months in prison. Even though the prison term imposed—15 (fifteen) years in prison—was less than what the Public Prosecutor had requested. The judicial panel also decided to award one of the victims Rp. 44.7 million in restitution. The restitution must be made by the JE no later than one month after the decision becomes final or becomes *inkracht*. If the convicted person does not make the required restitution, the prosecutor will seize his property and sell it at auction to cover the debt. This complies with Law No. 12 of 2022 of the Republic of Indonesia on Crimes of Sexual Violence.

The Law of the Republic of Indonesia No. 12 of 2022 Concerning Crimes of Sexual Violence is an example of political or criminal law reforms that address every component (but mainly the substance) of the legal system. Law enforcement measures against sexual violence should be continuously reviewed, assessed, and changed to reflect current circumstances, according to the five factors of law enforcement. In the meantime, if it has a legal component, the legal material needs to be updated. Likewise with the tools and resources used by law enforcement. It must be renewed if it is insufficient or less than ideal. It also cannot ignore the part that culture and society have played in this issue. These two factors influence how the general public perceives instances of sexual violence.

The ratification of the Law of the Republic of Indonesia Number 12 of 2022 on the Crime of Sexual Violence must be followed up in its application. Follow-up is a legal and non-legal steps. Legal steps include finalizing the drafting of implementing regulations. Non-legal steps include capacity building training and preparing resources in all regions. In addition, it must be followed by an understanding by law enforcement officials and the public in its application, so that the existence of the Law of the Republic of Indonesia Number 12 of 2022 Crimes of Sexual Violence is implemented effectively and can prevent and resolve the problem of sexual violence in Indonesia which is increasingly rife.

It is hoped that the Law of the Republic of Indonesia Number 12 of 2022 on Sexual Violence Crimes that has been ratified provides a complete understanding to law enforcers and the public regarding the articles in the law. One of the efforts that can be made is to socialize the law, so that the influence in matters related to prevention and protection can immediately have a broad effect. After being passed into law, stakeholders must immediately take advantage of Law of the Republic of Indonesia Number 12 of 2022 Crimes of Sexual Violence in the law enforcement process so that it can create a deterrent effect for the perpetrators and it is expected to be able to immediately reduce the potential for an increase in cases of sexual violence in Indonesia. Moreover, so far the majority of victims of sexual violence are women and children, both men and women. If the number of cases of sexual violence can continue to fall, then the future of the next generation will also be better.

The maximum and effectiveness in implementing Law of the Republic of Indonesia Number 12 of 2022 on the Crime of Sexual Violence in handling cases of sexual violence is largely determined by the readiness and professionalism of law enforcement officials, especially the National Police. Even though the National Police responded by forming a Women and Children Services unit to become a special directorate at Bareskrim. The formation of the Directorate of Women and Children Services for the Indonesian National Police and its apparatus up to the ranks of the Polres will greatly support the implementation of Law of the Republic of Indonesia Number 12 of 2022 for Crimes of Sexual Violence. The formation of Women's and Children's Services needs to be discussed together with the Ministry of Administrative Reform and Bureaucratic Reform, the Ministry of Law and Human Rights, and the State Secretariat.

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Conclusion  
The Zaenuddin Al-Qur'an Islamic Boarding School teaches memorizing and understanding the Qur'an. It is believed to be the pinnacle of intelligence and success in life. By understanding and memorizing the Qur'an humans can solve their life that appears one after another correctly. They will always be guided by the Koran, so they become smart people, able to solve problems quickly and precisely. the author suggest learn to understand and memorize the quran, so that you become a smart and successful person.

#### **4. Conclusion**

Based on the results of research and discussion it can be concluded as follows:

Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence is the main and first special rule in tackling criminal acts of sexual violence and to overcome challenges to law enforcement on the factor of legal substance. Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence is a manifestation of reforms carried out with politics or criminal law policies that target all sub-systems (especially substance) of the legal system by combining penal and non-penal means within it.

Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence has begun to be implemented as law enforcement in cases of sexual violence. In the case at the Malang Court, the panel of judges gave additional criminal restitution to the offender. If the convict does not pay restitution, the prosecutor will confiscate his property to be auctioned to pay the restitution.

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