



Inadequate Handling of Sexual Violence Victims from the Perspective of Legal Protection under Pancasila and the 1945 Constitution

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ARTICLE INFO

Keywords: Legal Protection, Legal Clarity, Sexual Violence, Law Enforcement

Received : 16, October

Revised : 18, December

Accepted: 20, February

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ABSTRACT

This study aims to analyze the effectiveness of existing statutory and organic regulations in addressing sexual violence, to examine the role of law enforcement officers in ensuring legal certainty for victims, and to assess the extent to which Pancasila values are integrated into the enforcement process. The research employs a normative juridical approach combined with a conceptual and statutory analysis, supported by secondary data from legislation, legal literature, and official reports related to sexual violence cases in Indonesia. The findings indicate that the enforcement of laws related to sexual violence has not been carried out optimally, primarily due to inconsistent interpretations of regulations, limited understanding of Pancasila-based legal values, and weaknesses in investigative and evidentiary processes. Organic regulations applied by law enforcement authorities have not yet provided adequate legal certainty or comprehensive protection for victims.

INTRODUCTION

Indonesia is a state that inherited its legal system from one of its former colonial powers, namely the Netherlands. After approximately 350 years of colonial rule, the Republic of Indonesia adopted and continued many elements of this inherited legal framework. Alongside this legacy, Indonesia has experienced highly diverse social developments shaped by assimilation and interaction with local cultures and traditions. As social dynamics have evolved, various forms of crime and legal violations have also increased, accompanied by increasingly complex and varied modes of operation (Indriyani & Fitria, 2022).

One form of violence that has become particularly prominent and openly reported in recent years is sexual violence, which has claimed a significant number of victims, especially women. The incidence of sexual violence in Indonesia continues to rise, indicating an urgent need for more rigorous, comprehensive, and critical legal analysis aimed not only at education and prevention but also at ensuring a strong deterrent effect for perpetrators (Tarore & Laksana, 2024). Sexual violence can occur to anyone and at any time, and sexual harassment frequently takes place in everyday settings, including within families, communities, workplaces, and peer groups. Such abuse often targets individuals who are socially or structurally vulnerable. The widespread occurrence of violence against women has generated deep fear among women, largely due to persistent value systems that position women as weak or inferior to men. In many segments of society, women are still perceived as objects that can be dominated, exploited, or subordinated. Although women constitute the majority of victims, recent social phenomena also reveal cases in which men, particularly underage boys, have become victims of sexual violence (Nisa & Ibrahim, 2024; Suseno et al., 2025).

Data from the Online Information System for the Protection of Women and Children (Simfoni PPA) records 19,276 cases of violence against children between 2019 and 2024, involving 14,960 female victims and 4,169 male victims, with sexual abuse ranking as the most prevalent form of violence during this period. Considering the substantial number of cases, it is evident that serious, systematic, and sustained monitoring and response measures should have been undertaken by the Indonesian government, particularly in addressing cases of sexual violence against children since 2019 (Farida et al., 2025).

Legal norms governing the conduct of law enforcement officers further reinforce the constitutional foundation of legal protection. Articles 9(a) and 10(a) of Regulation of the Indonesian National Police Number 7 of 2022 explicitly prohibit police officials from engaging in actions that unlawfully oppose Pancasila and the 1945 Constitution or that violate laws and standard operating procedures, including in law enforcement, public services, and the management of state assets. These provisions clearly demonstrate the direct legal linkage between Pancasila, the 1945 Constitution, and the obligation of state officials to uphold lawful and ethical conduct (Yuningsih et al., 2020).

The enactment of Law Number 12 of 2022 on Sexual Violence Crimes represents a significant step in strengthening sanctions against perpetrators and reaffirming judicial independence. Article 15 paragraph (1) of this law introduces aggravated penalties, including an additional one-third of the maximum sentence, for perpetrators who belong to specific professions such as healthcare workers, medical personnel, educators, and other professionals entrusted with victim protection and recovery. This reflects a heightened moral and legal responsibility attached to such professions (Abshar, 2024; Rizkiyah & Kamalludin, 2024).

At the international level, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/A/Res/34 of 1985) establish fundamental rights for victims, including compassion, access to information, participation in proceedings, protection of privacy and security, restitution, compensation, and access to justice. These principles mirror values that had already been articulated earlier in Pancasila and the 1945 Constitution, indicating that Indonesia had conceptually embraced victim-centered legal protection even before the international declaration was adopted (Sari et al., 2024).

Article 28D paragraph (1) of the 1945 Constitution explicitly guarantees every person the right to recognition, protection, legal certainty, and equal treatment before the law. This provision serves as a fundamental constitutional reference for law enforcement authorities in handling sexual violence cases, ensuring that all procedures and decisions align with principles of justice and legal certainty. The Indonesian Criminal Code (KUHP), particularly Articles 285, 289, and 290, further criminalizes acts of rape and sexual abuse, emphasizing violence, coercion, and exploitation, especially against women and minors. However, earlier formulations, such as Article 285, were limited in scope and did not explicitly address male victims, reflecting normative gaps that required reform.

Law Number 12 of 2022 on Sexual Violence Crimes significantly expands the scope of sexual violence offenses through a listing approach and the adoption of the *blanco strafbepaling* concept, thereby integrating various offenses regulated outside the law into a unified legal framework. This enables comprehensive handling, procedural enforcement, and victim protection under a *lex specialis* system. The law clearly outlines diverse forms of sexual violence, including physical and non-physical harassment, exploitation, forced marriage, electronic-based sexual violence, and offenses against children, without limiting protection based on gender.

Preventive efforts are also reflected in sectoral regulations, such as Minister of Education, Culture, Research, and Technology Regulation Number 30 of 2021, which emphasizes the prevention and handling of sexual violence within higher education institutions. This regulation underscores the responsibility of academic environments to create safe spaces and to regulate interactions between students, educators, and educational staff. Furthermore, Government Regulation Number 27 of 2024 strengthens coordination and monitoring mechanisms in the prevention and handling of sexual violence, focusing on victims' rights to information, legal assistance, psychological support, healthcare, and recovery services (Aidy & Sanaky, 2022; Rawung et al., 2025).

In light of these legal developments, the protection of victims of sexual violence must be consistently aligned with both substantive criminal law and procedural law in Indonesia. Despite the existence of comprehensive regulations, the persistence and increase of sexual violence cases raise critical questions regarding the effectiveness of implementation, enforcement consistency, and legal certainty. These issues underline the necessity of evaluating whether existing laws adequately address sexual violence, why reported cases continue to rise, and how legal certainty can be ensured through clear parameters for law enforcement in providing effective and humane legal protection to victims.

THEORETICAL REVIEW

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METHODOLOGY

The method is understood as a process consisting of principles and procedures for solving a problem, while research refers to a careful, diligent, and thorough examination of a phenomenon in order to expand human knowledge. Accordingly, a research method can be defined as a systematic process of principles and procedures used to resolve the problems encountered in conducting research. This legal research employs a sociological legal approach, also known as a juridical-sociological approach, which examines legal issues by applying legal principles and norms while also observing and analyzing how the law operates in practice. In this study, the approach is carried out by analyzing legal problems through an integrative pattern that combines legal materials with other relevant, accurate, and accountable digital information.

The research specification describes the application of valid and enforceable laws and regulations, which are then linked to relevant legal theories in order to assess research findings in comparison with a systematic and comprehensive conceptual framework. The type and source of data used in this study are secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include binding legal sources such as Pancasila, the 1945 Constitution of the Republic of Indonesia, the Indonesian Criminal Code (KUHP), and Law Number 12 of 2022 on Sexual Violence Crimes. Secondary legal materials consist of sources that explain and elaborate on the primary legal materials, including legal textbooks and law journals. Tertiary legal materials comprise supporting sources that provide further clarification of both primary and secondary legal materials, particularly credible internet-based data.

Data collection in this study is conducted through library research, in which secondary data are gathered by means of document study. This involves examining relevant literature and legal documents, followed by an inventory and selective selection of sources used as the research foundation. Through this process, theoretical frameworks, statutory regulations, expert opinions, and scholarly findings related to the research problem are identified and utilized. The data analysis method applied in this research is qualitative analysis, whereby data obtained from literature studies are systematically collected and categorized based on the facts and characteristics of the research object, and then analyzed qualitatively to draw conclusions regarding the research problem. The findings of this study are primarily derived from library research and are discussed using a descriptive-analytical approach, with the aim of presenting a comprehensive yet systematic overview of facts related to the research issue. The analytical aspect emphasizes careful interpretation of the data so that the conclusions reached are logically connected to the underlying background and legal context of the problem examined.

RESEARCH RESULTS

Sexual violence that frequently occurs, when compared with the patterns of handling carried out by law enforcement officers, has not yet been commensurate with the ideals of Pancasila and the 1945 Constitution of the Republic of Indonesia. This can be evidenced by examining digital information sources in the current era. Statutory regulations have been considered comprehensive with the existence of the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) and Law Number 12 of 2022 concerning Sexual Violence Crimes (Undang-Undang Tindak Pidana Kekerasan Seksual/UU TPKS).

Prof. John Pieris explains that Pancasila must continue to be upheld as the *groundnorm* by consistently and coherently practicing all of its principles in every aspect of national and state life. In this regard, national development as an embodiment of Pancasila must continuously be implemented within all legal norms in Indonesia. The realization of national development must also be grounded in the quality of human resources in the Republic of Indonesia, particularly the firmness of law enforcement officers in handling the settlement of sexual violence cases.

Sexual violence committed by perpetrators, whether individuals or groups, against victims and/or targets of such acts generally reflects the perpetrators' lack of understanding of the importance and necessity of the values contained in Pancasila. Perpetrators of sexual violence tend to be late adolescents or adults, and whether such acts are premeditated or spontaneous, they are largely driven by the mere gratification or channeling of lust or by motives of revenge. This is closely related to the criminal element of "premeditation" or other acts falling within the category of criminal law (Sabrina, 15 C.E.).

Based on monitoring conducted by the National Commission on Violence Against Women (Komnas Perempuan) from 1998 to 2013, over a period of 15 (fifteen) years in Indonesia, at least 15 (fifteen) forms of sexual violence were identified, namely:

- a. Rape.
- b. Sexual slavery.
- c. Sexual intimidation.
- d. Sexual prostitution.
- e. Sexual exploitation.
- f. Forced marriage.
- g. Trafficking of women for sexual purposes.
- h. Forced contraception and sterilization..
- i. Forced pregnancy.
- j. Forced abortion.
- k. Sexual torture.
- l. Sexual control.
- m. Inhumane punishment with sexual nuance.
- n. Sexual harassment.
- o. Harmful traditional practices related to sexuality.

These 15 (fifteen) forms of sexual violence identified through Komnas Perempuan's monitoring from 1998 to 2013 certainly constitute an important reference in the implementation of handling procedures by relevant law enforcement authorities, in order to provide fundamental legal protection in the genuine enforcement of law.

In addition, law enforcement officers must strengthen disclosure and investigative systems in proving sexual violence cases. The numerous difficulties in handling sexual violence cases have resulted in many cases not being brought before the courts, and it is not uncommon to encounter reports indicating that complaints by victims of sexual harassment or sexual violence are rejected by law enforcement officers due to difficulties in evidence. Such difficulties arise because sexual violence is generally committed without the presence of other individuals. Law enforcement officers should therefore handle cases as effectively as possible and provide legal certainty to victims, rather than delaying or even terminating the resolution process. Perpetrators of sexual violence must still be subjected to fair legal consequences regardless of their position, status, or standing. Essentially, sexual crimes may decline if legal processes and outcomes genuinely punish perpetrators with proportionate sanctions and if society provides social support to victims (Arief, 2011).

Proof in the legal process of sexual violence cases, despite facing obstacles, must continue until completion. Law enforcement officers should not, for any normative reasons, discontinue the complaint process initiated by victims of sexual violence. This issue is closely related to the presence or absence of legal certainty and justice in providing legal protection for victims, especially given the increasing incidence of sexual violence in Indonesia, which is also closely linked to the effectiveness and usefulness of existing laws (Mansur, 2008).

The Criminal Code (KUHP) specifically affirms acts of violence, although its regulatory framework is set out separately rather than unified in a single chapter, namely:

- a. Article 285, concerning "Crimes against decency".
- b. Articles 338 to 350, concerning "Crimes against life".
- c. Articles 351 to 358, concerning "Crimes of assault".
- d. Articles 359 to 367, concerning "Crimes resulting in death or injury due to negligence".
- e. Article 365, concerning "Theft preceded, accompanied, or followed by violence or threats of violence".

Wempie J.H. Kumendong, in his scholarly work *A Review of Rape under Article 285 of the Criminal Code*, states that several essential elements must be considered in the crime of rape. These elements correspond to the provisions of Article 285 of the Criminal Code. The subjective and objective elements of Article 285 include:

1. By violence or threat of violence
Violence in Article 285 of the Criminal Code refers to acts committed by the perpetrator to render the victim unconscious or helpless. According to S.R. Sianturi, "violence constitutes any act that uses force against a person or object that causes harm to the threatened party or shocks the person subjected to violence." Examples of violent acts in rape include pulling down the victim's trousers, pointing a weapon, uttering threats, throwing the victim to the ground, pressing the victim's chin, and inserting the perpetrator's genitalia into the victim's genitalia.
2. Coercion
Coercion places a person in a corner where there is no alternative but to comply with the perpetrator's will. Coercion is essentially accompanied by violence or threats of violence.
3. A woman
This element indirectly indicates that the perpetrator of rape is a man, as most cases demonstrate that men can engage in sexual intercourse with women regardless of age, including children and the elderly.
4. The woman is not his wife or is outside marriage
In this context, the victim of rape is outside a marital relationship with the perpetrator. However, sexual intercourse occurring both within and outside marriage must consider the provisions of Law Number 1 of 1974 concerning Marriage Law.
5. Sexual intercourse with her
Sexual intercourse is defined as forcing the insertion of a man's genitalia into a woman's genitalia. If the male genitalia merely come into contact with the female genitalia, it does not constitute rape but rather an act of molestation.

DISCUSSION

Article 289 of the Criminal Code, as explained by H.A.K. Moch. Anwar, states that obscene acts are all acts that violate decency or morality, including acts committed against one's own body or another person's body that breach standards of decency. Obscene acts encompass various forms of moral offenses, including sexual intercourse outside marriage.

Similarly, S.R. Sianturi clarifies that under Article 289 of the Criminal Code, obscenity generally includes sexual intercourse. The act of seeking pleasure through the use of genital organs by two or more persons constitutes an obscene act, regardless of whether ejaculation occurs.

The interpretations of Article 289 by H.A.K. Moch. Anwar and S.R. Sianturi essentially serve as preventive measures against sexual violence. However, acts violating morality must also be examined, such as unilateral and coercive acts by perpetrators involving unwanted touching or situations where victims are incapacitated. This is particularly relevant during investigation and evidentiary processes, including medical examinations, as sexual violence may begin with the administration of drinks or substances that render victims unaware of what has occurred.

According to Oemar Seno Adji, the term “morality offenses” is commonly understood sociologically as referring primarily to sexual offenses and sex-related crimes such as adultery, prostitution, homosexuality, abortion, obscenity, and others. This understanding differs from the broader conception in the Criminal Code, as morality is fundamentally shaped by societal perceptions and evaluations.

Protection for victims of sexual violence remains suboptimal due to limited public understanding of its causes and impacts, compounded by inadequate state-facilitated victim protection services and the limited capacity of community-based service providers. Legal protection for victims of sexual violence is not only a national issue but also an international concern requiring serious attention. Ensuring victim protection is a manifestation of justice within society. In practice, sexual violence cases pose significant challenges at all stages, from investigation and prosecution to adjudication, particularly due to evidentiary difficulties as such acts often occur without witnesses.

The Government and the House of Representatives of the Republic of Indonesia have agreed that sexual violence crimes cannot be resolved outside the court through restorative justice mechanisms, as stipulated in the Draft Criminal Procedure Code. According to Marc Ancel, penal policy is both a science and an art aimed at enabling better formulation of positive law and providing guidance not only to legislators but also to courts and law enforcement authorities.

The increasing incidence of sexual violence in Indonesia cannot be ignored, especially given the influence of technological advancement on emerging modes of sexual violence. Law enforcement in sexual violence cases must no longer be treated lightly, as such cases present momentum for fundamental legal reform, particularly regarding sexual violence regulations.

Cybercrime is a negative consequence of advancements in information and communication technology, including offenses against computer systems such as hacking, cracking, phreaking, and viruses, as well as crimes committed using digital media, such as cyber fraud, credit card fraud, cyber pornography, cyberstalking, and cyberterrorism. In 2024, the Ministry of Women’s Empowerment and Child Protection recorded 14,374 cases of sexual violence, an increase from 12,836 cases reported in 2023.

The effective functioning of both basic and organic regulations addressing sexual violence in Indonesia in the future should reflect civilized progress based on Pancasila and the 1945 Constitution. If necessary, amendments to specific articles of the Criminal Code related to sexual violence should be considered. Likewise, the Criminal Procedure Code should provide clear and reasonable boundaries in law enforcement practices.

Disparities in interpretation among law enforcement officers may arise if Pancasila and the 1945 Constitution are not firmly established as the legal foundation of Indonesian law, particularly concerning causal relationships within criminal law provisions. Analysis of sexual violence data and contributing factors should involve academics and higher education institutions with a focus on literacy and legal scholarship, grounded in both national and international literature, consistently linked to Pancasila and the 1945 Constitution as Indonesia's fundamental legal basis.

CONCLUSIONS AND RECOMENDATIONS

In conclusion, the existing statutory regulations addressing sexual violence in Indonesia have not yet been implemented optimally and remain insufficient in effectively resolving and comprehensively responding to the problem of sexual violence. This inadequacy is reflected in the persistent and even increasing number of sexual violence cases in Indonesia. The rising trend indicates that interpretations of local wisdom grounded in Pancasila are often misunderstood or improperly applied by law enforcement officials, particularly during the investigative stage, resulting in ineffective law enforcement practices. Furthermore, the parameters governing the use of existing and applicable organic regulations by law enforcement authorities have not provided adequate legal certainty, thereby failing to ensure effective legal protection for victims of sexual violence.

Accordingly, several recommendations are proposed. First, there is an urgent need for more in-depth, educationally based studies on statutory regulations to strengthen their capacity to address sexual violence in Indonesia comprehensively. Second, organic regulations, such as those issued by the Chief of the Indonesian National Police and frequently used as primary guidelines by investigators in handling sexual violence cases, must be aligned with the fundamental legal principles of the Indonesian state, namely Pancasila particularly the Fourth and Fifth Principles and the 1945 Constitution of the Republic of Indonesia. Third, law enforcement authorities should conduct periodic evaluations concerning the implementation of organic regulations in relation to victims of sexual violence, with explicit emphasis on the consistent application of criminal and civil sanctions as integral components of legal protection mechanisms.

ADVANCED RESEARCH

Still conducting further research to learn more about Inadequate Handling of Sexual Violence Victims from the Perspective of Legal Protection under Pancasila and the 1945 Constitution

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