

## Analysis of Certainty and Fairness of Gender Disparities Towards Victims of Sexual Violence

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### Abstract

Gender is a social (not biological) construct that can cause injustice for both men and women. With the increasing global awareness of sexual violence and human rights (Law No. 39/1999), this study examines the shift in Law No. 12/2022 which provides inclusive protection for all genders. This research aims to analyze gender equality in the context of sexual violence and identify the legal gaps in addressing sexual violence, which historically targeted only women. The study also examines the impact of Law No. 12 of 2022, which extends protection to all genders. This normative juridical research analyzes legal norms and their application in the Sexual Violence Crime Law (TPKS Law), focusing on gender issues, sexual violence, and the shift toward a more inclusive approach. The research shows that gender inequality, particularly in the legal treatment of men as victims of sexual violence, has been addressed with the introduction of Law No. 12 of 2022. This law is more inclusive, offering protection not only to women but to all genders, representing a significant shift toward equality in legal protection for sexual violence victims. The conclusion of this study is that while gender equality is a fundamental principle, there is still a need for consistent legal implementation and deeper understanding of gender equality in the context of sexual violence. The enactment of Law No. 12 of 2022 marks a positive step toward more inclusive legal protection for all genders, although challenges remain in its consistent application.

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### INTRODUCTION

The terms gender, nature, and parenting were not initially recognised in Indonesian culture, having been borrowed directly from English. In feminist studies, gender refers to the characteristics associated with a particular sex — including habits, cultural norms, and psychological behaviour — rather than to biological differences. Margaret Mead, an American anthropologist, concluded that the behavioural and personality differences between men and women are neither universal nor inherent (Coffman, 2021; Mead, 2026). Showalter similarly views gender as a social construct that categorises and differentiates the positions of men and women based on cultural norms (Haslanger, 2017; Nikbakht et al., 2025; Panahi et al., 2024).

Postmodern cultures, which value inclusivity, promote sensitivity to social injustice and advocate for the rights of marginalised groups. However, this cultural orientation often positions itself in opposition to institutions, viewing authority as a form of oppression (Linder et al., 2019; Moosa-Mitha, 2015). As a result, identity within this framework is defined not by institutional acceptance or personal happiness, but by meaningful contributions to the empowerment of those who are marginalised. While postmodern culture champions inclusivity, it has been criticised for inadvertently becoming an institution that suppresses conservative viewpoints (McManus, 2019, 2020; Rich, 2024).

Postmodernism, emerging in response to the perceived failures of modern culture, promotes gender fluidity — the idea that individuals may freely choose their gender identity. However, this form of gender relativity, bolstered by hyper-feminism, challenges traditional

gender roles and diminishes the distinctiveness of those roles in society. Despite its advocacy for minority rights, postmodernism has been associated with new forms of institutionalised oppression, particularly directed against conservative groups who dissent from its positions.

The concept of gender equality, largely influenced by Marxist ideology, frames women as an oppressed class and men as oppressors (Arat, 2015; Doña-Falcón, 2026). Gender inequality is often perpetuated by societal norms and traditional family structures, in which women are primarily cast in the role of homemakers. Feminists seek to achieve gender equality through cultural change, legal reform, and transformative practices in child-rearing (Ivanii, 2025; Raday, 2019; Zhussipbek et al., 2024). Gender equality remains a significant concern at the international level, having been incorporated into international law in 1948.

In Indonesia, gender equality became a subject of controversy with the introduction of the Gender Equality and Justice Bill (Rancangan Undang-Undang Kesetaraan dan Keadilan Gender/RUU KKG). This paper critically examines gender equality, its interaction with religious and cultural values, and the scientific basis for the differences between men and women. While men and women should be afforded equal opportunities, the inherent differences between them must be acknowledged, and equality does not imply identical capabilities. Research supports the view that men and women differ across many dimensions, and that neither can be deemed categorically superior to the other.

Several studies have examined gender disparities in cases of sexual violence. Aries Dirgayunita (2016) analysed post-traumatic stress disorder among victims of sexual harassment and rape. Hadibah Zachra Wadjo and Judy Marria Saimima (2020) discussed legal protection for victims of sexual violence within the framework of restorative justice. Maria Novita Apriyani (2021) examined the implementation of restitution for victims of sexual violence. However, the majority of prior research has focused on female victims, leaving a significant gap in the understanding of legal protection for male victims of sexual violence. Kathryn J. Holland et al. studied sexual harassment against men, highlighting the role of feminist activism and organisational context; yet a comprehensive legal analysis of gender-inclusive protection within Indonesian law remains limited. This study addresses that gap by analysing Law No. 12 of 2022 on Sexual Violence Crimes (Undang-Undang Tindak Pidana Kekerasan Seksual/UU TPKS), which extends legal protection to all genders.

This research aims to: (1) analyse gender equality in the context of sexual violence and identify legal gaps in addressing sexual violence that has historically been framed around female victims; (2) examine the impact of Law No. 12 of 2022, which extends protection to all genders; and (3) evaluate the implementation of the principles of legal certainty and fairness in handling sexual violence cases involving both female and male victims. The theoretical benefits of this research include enriching legal scholarship on gender equality and sexual violence, particularly with respect to the shift towards inclusive legal protection, and contributing to the development of legal certainty theory and dignified justice theory in the context of sexual violence law. The practical benefits are directed towards legislators and policymakers, who can draw on these findings to improve future regulations; towards law enforcement officials — including police, prosecutors, and judges — in applying the TPKS Law without gender bias; and towards victims of sexual violence, both male and female, in understanding their rights to equal legal protection. The research additionally benefits civil

society organisations and gender equality advocates in designing more effective programmes for victim support and legal literacy.

## RESEARCH METHODS

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Legal research is generally divided into three types: normative legal research, empirical normative legal research, and empirical or sociological legal research. Normative legal research examines aspects of positive law from within its own internal framework, as a consequence of the view that law is an autonomous institution that operates independently of external factors. Empirical normative legal research is a method that examines both the applicable legal provisions and the reality that occurs in society — that is, research conducted on actual conditions in the field — with the intention of finding facts that serve as research data, which are then analysed to identify problems and ultimately lead to their resolution. Empirical or sociological legal research, meanwhile, is influenced by the social sciences, reflecting the interdisciplinary nature of legal science, which requires input from various other disciplines to explain the many aspects related to the presence of law in society. This interdisciplinary character has the logical consequence of permitting the use of a social science approach in explaining the legal problems under study. In principle, the methodology of socio-legal research is a legal research methodology that employs a social science methodological approach in the broad sense.

The research method used in this study is normative juridical legal research — that is, research that provides an understanding of the normative problems encountered by dogmatic legal science in its activities of describing legal norms, formulating legal norms (through the enactment of laws and regulations), and upholding legal norms (through judicial practice). This study describes and elaborates, in a detailed, systematic, comprehensive, and in-depth manner, the termination of prosecution based on restorative justice from the perspective of the theory of dignified justice.

In analysing the legal issues addressed in this study, two types of data sources are employed: primary and secondary. The defining characteristic of primary legal materials is their binding and interconnected force. Such materials include applicable laws and regulations as well as reference books. Secondary data consists of materials that have been collected for the purpose of addressing the problem at hand; these are relatively accessible and include articles, literature, journals, and internet sources relevant to the research. All such materials are assembled and used as supporting sources in resolving the legal issues under examination. The primary legal materials used in this study include provisions from legislation such as Article 1 Number 1 of Law Number 39 of 1999 concerning Human Rights, Article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (*Penghapusan Kekerasan Dalam Rumah Tangga/KDRT*), as well as provisions from Law Number 1 of 1946 concerning Criminal Law Regulations and Law Number 12 of 2022 concerning the Crime of Sexual Violence (*Tindak Pidana Kekerasan Seksual/TPKS*). Secondary legal materials serve as a complement to primary legal materials and encompass legal documentation that is not in the form of official documents, such as textbooks, legal journals, and commentaries on court decisions relevant to this research. Books on criminal law, justice theory, and legal research outputs such as undergraduate theses, postgraduate theses, and dissertations also constitute secondary legal materials used in this study. To broaden and deepen insights, tertiary legal materials are additionally employed, encompassing non-legal materials such as those obtained from lecture activities, newspapers, magazines, internet sources, and similar resources used to supplement or support the research materials.

The data collection technique employed in this study is library research (studi kepustakaan), which is carried out by studying and reading books, magazines, print media, and electronic media that address the law on the termination of prosecution based on restorative justice as reviewed from the perspective of the theory of dignified justice, and by grouping and analysing data in accordance with the problems identified in this study in order to produce relevant solutions. This study employs a statute approach, which requires an understanding of the legislative hierarchy, given that the hierarchy reflects a structure that determines the relative position and authority of each law and regulation and facilitates an understanding of the relationship between one law and another. In addition, a historical approach is adopted by examining the background of the issue under study and the development of the regulations that govern it. In terms of data analysis, this study employs qualitative analysis, whereby the justification and formulation of conclusions are grounded in the quality of legal experts' opinions, doctrines, legal principles, theories, and normative legal formulations. The existing legal norms identified through the research will be analysed in conjunction with the opinions of relevant experts. All available materials will be collected and analysed holistically in order to address the issues that constitute the central problems of this study.

## RESULTS AND DISCUSSION

### Research Results

Gender equality or equality between men and women, returns to equal rights, responsibilities, opportunities, treatment, and judgment for men and women<sup>72</sup>. In Indonesia, there is also no socialization about sexual violence against men because most people normalize it and do not take it seriously. Even though men also have the same rights as women, men with a strong image can also feel the pain and trauma that they go through after receiving this treatment.

**Figure 1. Sexual harassment of men "We are also victims**

Type	Year	Percentage	Quantity
Sexual Violence Against Women	2023	80%	13.162
Sexual violence against men	2023	20%	2.888

Source: National Commission on Violence Against Women (Komnas Perempuan), Annual Notes (CATAHU) 2023 on Violence Against Women, accessed January 2024

### Non-Physical Sexual Abuse

Sexual harassment is a criminal act regulated in the Sexual Violence Crime Law (TPKS Law) in Indonesia. Articles 5 to 14 in the TPKS Law regulate various forms of sexual violence, both non-physical and physical, as well as other related criminal acts. The following is an explanation of several types of sexual violence based on the TPKS Law:

#### Non-Physical Sexual Abuse (Article 5)

Non-physical sexual harassment is regulated in Article 5 of the TPKS Law, which states that any person who commits non-physical sexual acts against the body, sexual desire, or reproductive organs with the aim of degrading the dignity and dignity of a person based on his sexuality and/or morality, shall be sentenced to a maximum of 9 months in prison and/or a maximum fine of Rp10,000,000.00. Non-physical sexual harassment is included in the category of complaint delims, which means that prosecution can only be carried out if there is a complaint from the victim. However, the TPKS Law excludes children and persons with

disabilities from this category, so non-physical sexual abuse of them is considered an ordinary offense.

### **Physical Sexual Abuse (Article 6)**

Physical sexual harassment is divided into three categories, namely:

- (a) Physical sexual harassment that degrades the dignity and dignity of a person with a maximum prison sentence of 4 years and/or a maximum fine of Rp50,000,000.00;
- (b) Harassment that unlawfully places a person under his or her power with a maximum prison sentence of 12 years and/or a maximum fine of Rp300,000,000.00;
- (c) Abuse of a person's position, authority, or vulnerability to force or mislead another person to commit sexual intercourse or obscene acts with a maximum prison sentence of 12 years and/or a maximum fine of Rp300,000,000.00.

Physical sexual harassment in category (a) is included in the complaint category, while categories (b) and (c) are ordinary crimes. As with non-physical abuse, children and persons with disabilities are not included in the complaint deliction category for physical abuse.

### **Forced Contraception (Article 8)**

Forced contraception is regulated in Article 8 of the TPKS Law, which states that any person who forces another person to use contraceptives with violence or threats of violence is sentenced to a maximum of 5 years in prison and/or a maximum fine of Rp50,000,000.00.

### **Forced sterilization (Article 9)**

Forcible sterilization carried out by force or threat of violence is regulated in Article 9, with a maximum prison sentence of 9 years and/or a maximum fine of Rp200,000,000.00.

### **Forced Marriage (Article 10)**

Article 10 regulates the forced marriage, which is threatened with imprisonment for a maximum of 9 years and/or a maximum fine of Rp200,000,000.00. Forced marriage includes forced child marriage and forced marriage of rape victims.

### **Sexual Torture (Article 11)**

Sexual torture committed by officials or persons acting as officials is regulated in Article 11, with a maximum prison sentence of 12 years and/or a maximum fine of Rp300,000,000.00.

### **Sexual Exploitation (Article 12)**

Harassment involving sexual exploitation with violence or abuse of position is described in Article 12, with a maximum prison sentence of 15 years and/or a maximum fine of Rp1,000,000,000.00.

### **Sexual Slavery (Article 13)**

Sexual slavery, which involves the sexual exploitation of a person, is regulated in Article 13 with a maximum prison sentence of 15 years and/or a maximum fine of Rp1,000,000,000.00.

### **Electronic-Based Sexual Violence (Article 14)**

Article 14 regulates the crime of electronic-based sexual violence, including recording, transmission of information, or stalking carried out without the consent of the victim, with a maximum prison sentence of 4 years and/or a maximum fine of Rp200,000,000.00.

The TPKS Law regulates various types of sexual violence with different criminal threats, depending on the type and impact of the crime. In addition, this regulation provides special protection for children and persons with disabilities by making some types of sexual violence

an ordinary offense, although under certain conditions it still follows existing criminal law procedures.

### **Analysis of Settings Related to Gender Disparities in Sexual Violence Cases**

Sexual violence, both physical and non-physical, is regulated under the Sexual Violence Crime Law (Undang-Undang Tindak Pidana Kekerasan Seksual/UU TPKS) in Indonesia. Articles 5 to 14 of the TPKS Law regulate various forms of sexual violence involving coercion, threats, deception, or seduction directed at the victim's body or reproductive organs — whether experienced as desired or undesired — with the aim of degrading the victim's dignity. This definition is consistent with that provided by the World Health Organization (WHO), which defines sexual violence as any act of forcing a person into unwanted sexual intercourse, or into acts considered shameful or degrading.

Women are often regarded as symbols of purity and honour in society. Consequently, when women are victims of sexual violence, this is frequently viewed as a source of disgrace, and the woman is often blamed. This perspective reinforces gender inequality and renders women the most vulnerable to sexual violence and sexual harassment. However, while men are generally perceived as more masculine and physically strong, they are not immune to sexual violence. The masculinity attributed to men is interpreted as a marker of strength and resilience, but this does not guarantee their freedom from sexual harassment.

Sexual violence against men frequently does not receive adequate attention, as evidenced by the limited number of institutions or organisations that specifically address such cases. Data indicate that 2,888 cases of sexual harassment against men have been recorded, demonstrating that sexual violence can affect anyone regardless of gender. The stigma associated with masculinity causes male victims of sexual violence to often feel confused and uncertain about what to do, owing to the scarcity of available information and support. In fact, male victims are equally entitled to legal protection, legal assistance, and medical care as female victims.

The government needs to facilitate reporting mechanisms and provide comprehensive assistance to all victims of sexual violence, regardless of gender. Although the TPKS Law provides legal certainty with respect to sexual violence, the implementation of its protective provisions remains limited. This is evidenced by the tendency of law enforcement officials to dismiss reports of sexual violence, particularly when the victim is male. Cases of sexual violence against men are frequently overlooked by social institutions and the media, which are more inclined to portray women as victims.

Gender injustice is also evident in the way society responds to sexual violence against men. The masculinity attributed to men is often called into question when they are victims of sexual violence, and this social stigma deters them from reporting incidents or seeking assistance. In many cases where the perpetrator is a woman and the victim is a man, the community tends to trivialise or disregard the matter entirely. It is therefore important to cultivate awareness of the need for gender equality in the handling of sexual violence cases, so that both men and women are afforded equal rights to protection and recovery.

It is essential that every victim of sexual violence — both male and female — receive equal protection, encompassing medical treatment, legal assistance, psychological support, and social rehabilitation. The TPKS Law provides a clear legal basis for victims' rights, including the right to protection, recovery, and compensation. However, for these services to be realised

comprehensively, serious commitment is required from the government and relevant institutions to ensure equality in the handling of sexual violence cases.

Gender equality in law is essential to ensure that all victims of sexual violence, regardless of gender, receive equal protection under the law. The TPKS Law has corrected the disparity that previously existed by providing legal certainty for men as victims of sexual violence, thereby contributing to a more meaningful realisation of legal certainty and ensuring that the rights of all victims are protected and fulfilled equitably.

To address sexual violence comprehensively — against both women and men — a more gender-sensitive approach is required, one that does not discriminate against any party. Society, social institutions, and the government must work collaboratively to raise awareness of the importance of protection for all victims of sexual violence and to ensure that their rights are upheld in accordance with the principles of equality and justice. Additionally, adequate psychological, medical, and legal support must be made available to victims of sexual violence to facilitate their recovery and prevent future discrimination.

### **Analysis of the Sexual Violence Crime Law**

The issue of gender disparity in sexual violence cases in Indonesia gained significant attention following nearly a decade of regulations that had not fully accommodated male victims. Previously, many provisions were oriented exclusively towards female victims, as reflected in Article 1 of the Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga (UU PKDRT/Domestic Violence Elimination Law), Article 285 of the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP), and Article 286 of the Criminal Code, all of which explicitly identified women as the primary victims of sexual violence. However, as public awareness of men's rights as victims of sexual violence grew, the government responded by enacting more inclusive legislative reforms.

On 12 April 2022, the government introduced a draft amendment to the sexual violence law that accommodates victims from all walks of life, including women, men, the elderly, and children. The draft was passed on 9 May 2022 as the Sexual Violence Crime Law (Undang-Undang Tindak Pidana Kekerasan Seksual/UU TPKS) of 2022, which is designed to provide comprehensive regulation concerning the prevention, handling, protection, and restoration of the rights of victims of sexual violence. This law also emphasises the importance of coordination between central and regional governments, as well as international cooperation in the prevention and handling of sexual violence.

One of the important innovations introduced by this legislation is the recognition of the role of the community in the prevention of sexual violence and the recovery of victims. The community is expected to play an active role in fostering a safe environment free from sexual violence. With the enactment of this law, it is hoped that legal institutions — including SAPA, Komnas Perempuan, Komnas HAM, LPSK, and law enforcement officials — will become more responsive to sexual violence cases and provide support to all victims, not only women but also men and children.

Article 39 of the TPKS Law regulates the mechanism for reporting alleged sexual violence, allowing victims or individuals with knowledge of an incident to report to any of the designated institutions. This article strengthens victims' rights to equal access to legal protection and treatment, free from discrimination.

The TPKS Law is grounded in fundamental principles, including respect for human dignity, non-discrimination, the best interests of victims, justice, utility, and legal certainty. Article 2 of the TPKS Law affirms that the regulation of sexual violence must treat all individuals with equal respect, regardless of gender or other background.

Article 5 of the TPKS Law provides that any person who commits non-physical sexual abuse against another person's body or reproductive organs may be subject to imprisonment or a fine. Article 6, meanwhile, regulates acts of physical sexual harassment, which are punishable by imprisonment and a fine commensurate with the severity of the act. Within this framework, it is essential to afford maximum protection to victims, including the right to be treated with respect and to be protected from discrimination.

In practice, the implementation of this law entails providing maximum protection to victims, preserving their privacy, ensuring access to physical and mental health services, and providing the necessary legal support. The principle of non-discrimination enshrined in the TPKS Law affirms that every individual, regardless of background or gender, is entitled to equal protection, ensuring that all victims — both male and female — enjoy equal rights throughout the legal process and recovery.

The principle of legal certainty is also a foundational principle of the TPKS Law, ensuring that regulations governing acts of sexual violence are clear, predictable, and accessible to all parties. This fosters a consistent legal system and gives the public confidence that violations will be addressed with clear and proportionate sanctions. This principle also supports the protection of human rights by ensuring that individuals are not prejudiced by legal ambiguity.

Furthermore, the TPKS Law is closely aligned with the theory of dignified justice (*teori keadilan bermartabat*), which prioritises gender equality in the regulation of sexual violence. This theory requires equal treatment for all individuals regardless of gender, by granting equal rights to men and women in both legal proceedings and remedial processes. Gender equality as enshrined in the TPKS Law ensures that the law protects not only female victims but also male victims and individuals of diverse gender identities.

In practice, the theory of dignified justice recognises that victims of sexual violence — particularly those who are vulnerable, such as women and individuals with diverse gender identities — face specific challenges. Legal arrangements must therefore take these vulnerabilities into account to ensure fair treatment for all parties. The theory also rejects gender stereotypes that may influence the assessment of victims or perpetrators, ensuring that each individual is treated with equal regard.

Through the application of these principles, the TPKS Law provides a solid foundation for protecting individual rights and creating a society that is safe, equal, and free from sexual violence. Gender equality as embedded in this law is an important instrument in building a just system and protecting all victims of sexual violence. With clear, consistent, and inclusive provisions, it is hoped that Indonesian society will become more sensitive to the issue of sexual violence — not only against women, but also against men and all other groups — thereby creating a safer and more equitable environment for all.

## CONCLUSION

The latest amendments to the Sexual Violence Crime Law (UU TPKS) mark a significant step forward in addressing gender disparities in the handling of sexual violence. Previously, this inequality was reflected in the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHPP), which expressly limited the definition of sexual violence victims to women through Articles 285 and 286. The new law has overcome these limitations by expanding its legal scope to encompass all gender groups, including male victims. These amendments establish a clearer and more gender-responsive legal basis, eliminating the legal uncertainty that had previously been detrimental to certain members of society. By integrating the theory of legal certainty (teori kepastian hukum), the government has adapted the law to the demands of gender justice, reflecting a commitment to the principles of legal certainty and providing a more inclusive legal framework.

The implementation of Law Number 12 of 2022 reflects a progressive effort to provide equal protection for all victims of sexual violence. Previously, men who were victims of sexual violence were frequently overlooked in legal proceedings, as the Criminal Code identified victims of sexual violence exclusively as women, thereby creating legal uncertainty. The new legislation explicitly transforms this paradigm by affirming victims' rights, ensuring their active participation in legal processes, and guarding against gender stereotyping. Through the integration of the theory of dignified justice (teori keadilan bermartabat), this law establishes a fairer legal foundation, protects human rights, and steers society towards an environment that is supportive of individual rights. By taking into account multiple dimensions of justice — both from a gender perspective and from the broader standpoint of human rights — this law is expected to bring about positive change in the comprehensive handling of sexual violence.

Following the enactment of Law No. 12 of 2022 concerning the Crime of Sexual Violence, it is hoped that law enforcement officials will uphold the values enshrined in the law and ensure legal certainty in handling all cases of sexual violence regardless of the victim's gender. Law enforcement officials are also expected to apply the law without comparison or differentiation on the basis of gender. In addition, the ministries and agencies responsible for addressing sexual violence need to be more proactive in developing programmes aimed at preventing such acts, particularly those targeting minority groups such as male victims, whose numbers are smaller and who are often reluctant to report due to prevailing societal stigma. More intensive public outreach directed at male victims of sexual violence is therefore needed to encourage them to speak out and report incidents to the relevant authorities. It is hoped that as more men come forward to report, law enforcement will be able to uphold the law equitably — not only for female victims but also for male victims. Society is likewise encouraged to refrain from judging victims and to instead offer support, enabling them to come to terms with their experiences and to heal. These measures are essential to creating a safe, equitable, and inclusive environment for all individuals, without exception.

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