

Restorative Justice Approach in Handling Sexual Violence Criminal Cases

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Abstract: This study examines the implementation of restorative justice approaches in handling sexual violence cases after the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS). Through a qualitative approach with empirical juridical design, the research was conducted using in-depth interviews with informants from the Legal Resource Center for Gender Justice and Human Rights (LRC-KJHAM) in Semarang and literature review. The findings reveal inconsistencies in the implementation of Article 23 of UU TPKS, which prohibits out-of-court settlements except for juvenile offenders. Law enforcement officers, particularly the police, still employ peaceful settlement approaches based on older regulations that contradict UU TPKS. This condition negatively impacts victims who often do not receive proper justice and recovery, and even experience revictimization. This research recommends that the government promptly develop more operational derivative regulations and enhance the capacity of law enforcement officers to adopt a victim-centered perspective...

Keywords: restorative justice, sexual violence, UU TPKS, victim protection, criminal justice system.

1. INTRODUCTION

Indonesia, as a constitutional state, has a responsibility to continuously update its regulations in line with social changes and the growing complexity of issues in society. One of the persistent concerns is the high prevalence of sexual violence, particularly against women and children (Susiani et al., 2024). Data from the National Commission on Violence Against Women (Komnas Perempuan) indicates a significant increase in sexual violence cases, demanding serious attention in terms of legal handling. Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS) emerged as a progressive legal response that provides comprehensive protection to victims, including the prohibition of out-of-court settlements, except when the perpetrator is a minor (Salsabilla, 2025).

Restorative justice, previously considered an alternative approach to criminal case resolution, in practice often fails to deliver justice for victims of sexual violence. Despite regulations stipulating that sexual violence crimes cannot be resolved through non-litigation methods, implementations of restorative justice are still found, including in rape cases that end in peaceful settlements, sometimes even resulting in marriage between the perpetrator and the victim (Safitri et al., 2023). This has drawn criticism for disregarding substantive justice and the restoration of victims' rights.

Previous research ULHAQ (2022) has discussed the application of restorative justice in various forms of criminal offenses; however, most were conducted before the enactment of the UU TPKS or without considering the provisions of Article 23 of the UU TPKS. Consequently, there exists a significant gap in evaluating the implementation of restorative

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justice after the enactment of this law, particularly in the context of protecting victims of sexual violence. This research is essential to examine the compatibility of the restorative justice approach with the new legal framework and its impact on victims, thereby providing concrete input for policymakers and law enforcement officials.

The objective of this research is to analyze the implementation of the restorative justice approach in handling sexual violence crimes after the enactment of the UU TPKS, as well as to examine its impact on victims when case resolution is conducted without applying this approach.

2. LITERATUR REVIEW

This research draws upon two complementary theories in discussing legal approaches toward sexual violence crimes: Progressive Legal Theory and Restorative Justice Theory.

Progressive Legal Theory, proposed by Satjipto Rahardjo, emphasizes that law is not merely a rigid normative system but should serve as an instrument to pursue substantive justice (Edy et al., 2024). Within this paradigm, law must be responsive to social dynamics and victims' needs, capable of bridging the gap between positive law and societal realities. Progressive law views the ultimate purpose of law as achieving happiness and humanity, rather than simply maintaining formalistic legal certainty (Sinaga et al., 2025). In the context of sexual violence, this theory demands greater protection for victims, including rejection of case resolution approaches that fail to provide deterrent effects for perpetrators or rehabilitation for victims.

Meanwhile, Restorative Justice Theory has evolved as a criminal case resolution model emphasizing the restoration of relationships between perpetrators, victims, and the community (Arief & Ambarsari, 2018). Tony F. Marshall defines restorative justice as a process involving all interested parties working together to address the consequences of a criminal act and to seek equitable solutions (Utami, 2018). In this approach, dialogue, acknowledgment of wrongdoing, apologies, and compensation become essential elements. Although this concept brings a humanistic approach and is considered effective in certain cases, in sexual violence crimes, this approach potentially disregards power relation imbalances and victims' trauma. Therefore, the application of restorative justice in sexual violence cases needs to be examined more critically and contextually.

Several previous studies serve as references for this research. Heryansyach (2021) examined protection guarantees for sexual violence victims within the restorative justice method prior to the enactment of the Sexual Violence Crimes Law (UU TPKS). He highlighted systemic weaknesses in fulfilling justice for victims when the resolution process focuses solely on mediation and reconciliation. Rosyadi (2019) investigated the application of restorative justice in domestic violence cases through penal mediation methods, demonstrating that this approach is highly contextual and requires careful implementation. Meanwhile, (Caesari, 2022) focused on the application of restorative justice for juvenile offenders in sexual violence cases in Magetan Regency, which was deemed applicable as long as victims' consent and comprehensive protection were properly considered.

Previous research was generally conducted before the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes, or did not specifically address the legal implications of Article 23, which explicitly prohibits out-of-court settlements except when the perpetrator is a minor. Therefore, this research offers an important contribution in examining the position of the restorative justice approach after the implementation of UU TPKS, as well as its impact on victims' legal and psychological protection efforts.

Implicitly, this research is based on the assumption that the restorative justice approach in the context of sexual violence has limitations and even risks, especially when used

inconsistently with victim protection principles. Therefore, it is important to evaluate the application of this approach to ensure it does not contradict the spirit of justice embodied in the UU TPKS.

3. Methods

This study employs a qualitative approach with an empirical juridical design, which examines law as a social phenomenon observable within societal realities. The empirical juridical approach was chosen because the focus of the study is not only on written legal norms but also on how these laws are implemented in practice, particularly in the context of applying a restorative justice approach to sexual violence cases following the enactment of Law Number 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS).

The population of this study includes all practices related to the handling of sexual violence cases that are relevant to the concept of restorative justice in Indonesia. The sample was determined purposively by selecting cases handled by institutions that focus on gender-based violence issues, specifically the Legal Resource Center for Gender Justice and Human Rights (LRC-KJHAM) in Semarang.

4. RESULTS AND DISCUSSION

Data collection was carried out using two primary techniques: in-depth interviews with key informants comprising the director and advocacy staff of LRC-KJHAM and literature review of legal documents, academic literature, and other secondary data. The research instrument consisted of interview guidelines developed based on the core issues of the study. Data analysis was conducted using a qualitative descriptive approach, employing inductive methods to interpret field data in light of relevant legal theories. The interview findings were analyzed and compared with normative provisions of the Sexual Violence Crime Law (UU TPKS) and other related regulations, and were reinforced by academic literature. The validity of the data was tested using source triangulation, which involved comparing information from multiple informants to reach more objective conclusions. The research adopted the interactive analysis model by Miles and Huberman, which includes three main components: data reduction, data display, and conclusion drawing/verification.

The findings of the study reveal that the implementation of the restorative justice approach in handling sexual violence cases following the enactment of Law Number 12 of 2022 still faces inconsistencies in practice. Although Article 23 of the UU TPKS explicitly prohibits the settlement of cases outside the judicial process except in cases involving child perpetrators law enforcement officers on the ground, particularly the police, continue to refer to older regulations such as Police Regulation Number 8 of 2021, which allows for amicable settlements.

The study also found that victims often do not receive appropriate justice and recovery when cases are resolved through restorative mechanisms, which in practice tend to strengthen the position of the perpetrators. This condition highlights a discrepancy between the idealistic goals of the law and the reality of its implementation. Theoretically, the results of this study reinforce the urgency of adopting a progressive legal approach that places the interests of victims at the center of justice. Practically, the findings emphasize the importance of drafting implementing regulations for the UU TPKS and reaffirming the commitment of law enforcement officials not to apply restorative justice in sexual violence cases, except in instances involving child perpetrators as stipulated by the law.

4.1 Application of Restorative Justice Approach to Sexual Violence Crimes Prior to the Enactment of the Anti-Sexual Violence Law

The handling of sexual violence crimes in Indonesia has undergone a significant transformation with the enactment of Law Number 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS). Sexual violence is a violation of human dignity and integrity, with reported cases continuing to rise over time. The ratification of the UU TPKS marks an important milestone in efforts to strengthen protections for victims, particularly women (Herawati et al., 2023). Prior to the UU TPKS, the regulation of sexual violence under the Indonesian Criminal Code (KUHP) was considered insufficiently comprehensive. The KUHP narrowly defined sexual crimes, such as rape, as limited to penile-vaginal penetration and required a medical certificate (*visum*) as evidence. In reality, sexual violence encompasses a wide spectrum, ranging from verbal to non-verbal abuse. This narrow definition led to many victims being denied justice.

The UU TPKS serves as a *lex specialis* that comprehensively governs sexual violence crimes. Article 4, paragraphs (1) and (2), expands the scope of sexual violence into nine primary categories: non-physical sexual harassment, physical sexual harassment, coercion to use contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and technology-facilitated sexual violence (Megawaty et al., 2024). Additionally, the law addresses other forms such as rape, acts of indecency, sexual exploitation of children, and sexual violence within domestic settings.

The UU TPKS introduces four key breakthroughs: first, the criminalization of new forms of sexual violence that were previously unregulated; second, the establishment of victim-centered procedural law from investigation through trial; third, the strengthening of victims' rights, including tailored services for handling, protection, and recovery; and fourth, the elimination of restorative justice mechanisms in resolving sexual violence cases outside the judicial process, except in cases involving child perpetrators (Nurisman, 2022).

The exclusion of restorative justice represents a significant policy shift aimed at maximizing protection for victims. This approach stems from the recognition that not all legal cases especially those involving sexual violence can be fairly resolved through restorative justice mechanisms, which often fail to address the complex impact on victims. The successful implementation of the UU TPKS largely depends on effective law enforcement. Indonesia's criminal justice system comprising the police, prosecution, judiciary, and correctional institutions bears a substantial responsibility in applying this law. Strong coordination among these law enforcement bodies is crucial to ensure that the rights of sexual violence victims are upheld and that justice is comprehensively achieved.

4.2 Application of Restorative Justice Approach to Sexual Violence Crimes After the Enactment of the Anti-Sexual Violence Law

The implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS) has not been fully effective, particularly with regard to Article 23, which eliminates the use of restorative justice in handling sexual violence cases. Research conducted at the Legal Resource Center for Gender Justice and Human Rights (LRC-KJHAM) reveals a significant gap between legal provisions and field practices (Hairi & Latifah, 2024). The UU TPKS clearly stipulates that sexual violence cases must not be resolved outside the formal judicial process. However, in practice, police officers often continue to recommend or even pressure victims to pursue restorative justice, citing Indonesian National Police Regulation Number 8 of 2021. This practice contradicts the legal principle of *lex superior derogate legi inferiori*, wherein higher legal norms (in this case, the UU TPKS) should override lower-ranking regulations.

This lack of victim-centered law enforcement indicates an institutional unpreparedness to implement the UU TPKS. Victims who have already endured psychological trauma from sexual violence are further burdened by the repeated drafting of police investigation reports (Berita Acara Pemeriksaan, or BAP) when they reject restorative justice options. This approach contributes to re-victimization and undermines the victims' motivation to seek justice.

LRC-KJHAM, as a legal aid organization, asserts that restorative justice is not an appropriate solution for sexual violence cases. This mechanism often disregards victims' rights and fails to account for long-term psychological impacts. Based on the organization's experiences, many cases resolved through restorative justice ultimately result in repeat reports either due to recurring violence or because the perpetrators fail to uphold the agreed-upon terms. The impact of sexual violence cannot be measured materially and is inherently complex, affecting victims' psychological, social, and economic well-being. Trauma recovery varies in duration, ranging from months to several years. Unfortunately, Indonesia's legal culture has yet to fully adopt a victim-centered perspective. Law enforcement officers often lack empathy and may even blame the victim, for example by asking intimidating questions about the victim's clothing or the context of the incident.

Legal scholar Satjipto Rahardjo emphasized that the quality of law enforcement in Indonesia has declined due to a lack of progressive legal thinking. Law should uphold humanity and substantive justice, rather than rigidly adhering to formalistic procedures (Narwadan et al., 2025). In the context of sexual violence, law enforcement officers must adopt a victim-oriented perspective and enforce the UU TPKS consistently, guided by principles of humanity and justice.

4.3 The Impact on Victims Related to the Settlement of Sexual Violence Cases Without the Application of Restorative Justice

As a state governed by law and a duty holder under human rights obligations, Indonesia is responsible for protecting the fundamental rights of all its citizens, including victims of sexual violence. The enactment of Law Number 12 of 2022 on the Crime of Sexual Violence (UU TPKS) marks a substantive legal advancement over previous regulations, as it explicitly outlines victims' rights to case handling, protection, and recovery, as stipulated in Articles 66 through 70 (Nurisman, 2022). However, the reality of its implementation reveals a significant gap between legal norms and actual practices, particularly regarding the prohibition of restorative justice as mandated in Article 23 of the law.

Findings from interviews with the Legal Resource Center for Gender Justice and Human Rights (LRC-KJHAM) indicate that, despite the law's clear recognition of victims' rights, law enforcement officials frequently continue to encourage the resolution of cases through restorative justice—even when victims explicitly object. In practice, this approach often harms victims psychologically and socially. One case under review involved a rape survivor who, under pressure from both family and authorities, was married to her assailant. This forced marriage ended in divorce and the issuance of an SP3 (Order to Terminate Investigation). The case exemplifies a misuse of restorative justice that undermines the very essence of justice and human rights protection.

Further evidence from reports by the Indonesian Judicial Reform Society (IJRS) and the International NGO Forum on Indonesian Development (INFID) highlights the issue: 60% of victims did not receive legal resolution, 39.9% received compensation from perpetrators, and 26.2% ended up marrying their assailants. These figures support the argument that restorative justice, when applied to sexual violence cases, often fails to uphold victims' rights. According to LRC-KJHAM, such resolutions should only be pursued if they represent the

victim's conscious and unpressured decision particularly in cases involving non-physical, less severe forms of violence.

Moreover, the use of restorative justice in sexual violence cases is viewed as undermining criminal accountability and fostering impunity. Out-of-court settlements are frequently influenced by power dynamics, social pressure, and patriarchal attitudes among officials, who sometimes frame marriage as a "moral" solution (Jamilah, 2025). This reflects a weak legal culture and a lack of victim-centered perspectives within the justice system. Nevertheless, LRC-KJHAM also emphasizes the importance of respecting victims' agency, including when they opt for non-litigious resolutions. Psychological recovery remains critical, as trauma responses vary greatly and are not measurable in material terms some survivors may require years to fully recover.

This discussion illustrates that the effective implementation of the UU TPKS depends not only on the law itself, but also on the attitudes of law enforcement officials, the integration of gender perspectives, and the broader legal consciousness of society. In the context of sexual violence, the use of restorative justice must be strictly limited and only applied with the full, informed consent of the victim. Law, as Satjipto Rahardjo asserted, must serve to humanize not merely function as a bureaucratic tool for case closure.

5. Conclusion

This study concludes that the application of restorative justice in handling sexual violence cases following the enactment of Law Number 12 of 2022 on the Crime of Sexual Violence (UU TPKS) has not been implemented in accordance with the prevailing legal provisions particularly Article 23, which explicitly prohibits out-of-court settlements. Law enforcement officers, especially the police, continue to refer to outdated regulations that contradict the UU TPKS, thereby risking the neglect of victims' rights.

This practice reflects a weak understanding of victim-centered perspectives and reveals the continued dominance of a legal culture that does not prioritize victims. Based on these findings, it is recommended that the government urgently draft more operational implementing regulations for the UU TPKS and provide comprehensive training for law enforcement personnel to adopt a victim-oriented approach and refrain from applying restorative justice in sexual violence cases. This study is limited to a single location and institution; therefore, broader research across different regions and institutions is essential to gain a comprehensive picture of the UU TPKS implementation nationwide..

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