

Legalization Of The Sexual Violence Law Perspectives Rule Of Jurisprudence Maslahah Leader Policy

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ABSTRACT

Cases of sexual violence in Indonesia from year to year are increasing. The government also responded by passing the Law on Sexual Violence in 2022. It aims to ensure protection for Indonesian society, especially women and children, from the threat of sexual violence. But, there is a rule of jurisprudence whose essence is that the policies of the leader must cause benefit to his people. Therefore, this study aims to describe the purpose of establishing and ratifying the Sexual Violence Law and to analyze the benefits of the leader's policy in the passage of the Sexual Violence Law. The research method is descriptive normative by conducting literature studies from the main sources of the Academic Manuscript of the Law on the Crime of Sexual Violence. The results and discussion of this study state that the main content of the formation and ratification of this law is an effort to update a comprehensive legal umbrella that realize protection for society in general and victims of sexual violence in particular. When viewed from the rules of jurisprudence that theoretically the ratification of this law has implemented the policy of a good leader, namely based on the content of the articles in it although rudimentary. However, it practically cannot be categorized as a policy of a good leader because this law has just been passed and has not been implemented in society as a whole and only partially.

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PRELIMINARY

Sexual violence in Indonesia is still a problem that continues to roll and has not found the right and effective solution composition to overcome it. Based on the Annual Records of Komnas Perempuan in the period 2012 to 2021 or about 10 years, there were at least nearly 50 thousand reports of sexual violence cases. Even based on data from January to November

2022, Komnas Perempuan has received 3,014 cases of sexual violence.¹ Unfortunately, even sexual violence in Indonesia is like an iceberg phenomenon, namely of the many cases reported, there are actually many more that are not revealed and not reported for various reasons behind it.²

Sexual violence is a broad category of acts in which a person exerts his or her power and control over another person through unwanted or harmful sexual acts.³ This sexual violence itself has 15 forms, namely rape, sexual intimidation, sexual harassment, sexual exploitation, trafficking of women for sexual purposes, forced prostitution, sexual slavery, forced marriage, forced pregnancy, forced abortion, forced contraception and sterilization, sexual torture, inhuman and sexually nuanced punishment, traditional practices with sexual nuances and endangering or discriminating against women, and sexual control.⁴ Even along with the times, there is also the term KGB0 (Online-Based Sexual Violence) and it is possible that there are still other forms of sexual violence.⁵

This sexual violence is an urgent problem because it is related to human rights issues inherent in humans and must be given protection.⁶ To provide full human rights protection for victims, the government already has regulations based on articles 284 to 286 of the Criminal Code concerning rape and fornication, but these legal instruments have not provided a broad and comprehensive legal umbrella against various other forms of sexual violence.⁷ So on May 9, 2022, the Government of Indonesia passed a new legal umbrella for the problem of sexual violence in Indonesia through Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.⁸

On the other hand, the leader in carrying out the mandate towards the object of his leadership must refer to the realization of benefits or benefits in each of his policies both in the form of benefits in the world and benefits in the hereafter.⁹ This is as the practice and implementation of one of the rules of branch jurisprudence agreed upon by the majority of scholars which means "The actions of the leader (Imam) towards his people must be linked to benefit."¹⁰ So in the context of this study, the Indonesian government through the House of Representatives of the Republic of Indonesia and the President as leaders and policy makers must certainly provide policies that are beneficial and beneficial in responding to cases of sexual violence in Indonesia that have not been resolved. This is important because

¹ Komnas Perempuan, "Siaran Pers Komnas Perempuan Tentang Peringatan Kampanye Internasional Hari 16 Anti Kekerasan terhadap Perempuan (25 November – 10 Desember 2022)," Komisi Nasional Anti Kekerasan Terhadap Perempuan, *Siaran Pers* (blog), 2022, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-peringatan-kampanye-internasional-hari-16-anti-kekerasan-terhadap-perempuan-25-november-10-desember-2022#:~:text=Komnas%20Perempuan%20pada%20Januari%20s.d,899%20kasus%20di%20ranah%20personal>.

² CNN Indonesia, "Gunung Es Kekerasan Seksual, Culture of Silence dan Ruwetnya Hukum RI," CNN Indonesia, *Analisis* (blog), 2021, <https://www.cnnindonesia.com/nasional/20211210180407-12-732664/gunung-es-kekerasan-seksual-culture-of-silence-dan-ruwetnya-hukum-ri/2>.

³ Michigan State University, "Sexual Violence Definitions," Center for Survivors, *Sexual Violence* (blog), t.t., <https://centerforsurvivors.msu.edu/education-resources/sexual-violence-educational-information/sexual-violence-definitions.html>.

⁴ Thoeng Sabrina, "15 Bentuk Kekerasan Seksual" (Komnas Perempuan, 2013), https://drive.google.com/file/d/1jtyyAgVsJ0007bRUqE00zWM_pzADMEs8/view.

⁵ Nita Anggraeni dan Humaeroh, "Problematisasi Tindak Pidana Kekerasan Seksual Dalam Sistem Hukum di Indonesia," *Al Ahkam* 17 (2021): 36.

⁶ Yonna Beatrix Salamor dan Anna Maria Salamor, "Kekerasan Seksual Terhadap Perempuan (Kajian Perbandingan Indonesia-India)," *Balobe Law Journal* 2 (2022): 8.

⁷ Muhammad Wahyu Saiful Huda dan Rizqiya Lailatul Izza, "Quo Vadis Perlindungan Kekerasan Seksual: Urgensi RUU PKS Sebagai Perlindungan Korban Kekerasan Seksual," *IPMHI LAW JOURNAL* 2 (2022): 175–76.

⁸ Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia, "Tindak Pidana Kekerasan Seksual," Pub. L. No. 12 (2022).

⁹ Achmad Musyahid Idrus, "KEBIJAKAN PEMIMPIN NEGARA DALAM PERSPEKTIF KAI DAH FIKIH : Tasarruf Al-Imam Manutun Bil Maslahah," *al daulah* 10 (2021): 125.

¹⁰ Duski Ibrahim, *AL-QAWA'ID AL-FIQHIYAH (KAI DAH-KAI DAH FIQIH)* (Palembang: Noer Fikri, 2019), 109.

the rules of jurisprudence are one of the norms in Islamic law that are directly related to theoretical and practical aspects.¹¹

Previous research from Risal and the Nurmalasari and Waluyo teams on the effectiveness of this sexual violence law is legally positive.¹²¹³ According to Manuputty, he also reviewed this law from the Formil Theory of Positive Law.¹⁴ So that this study has a novelty of studying Islamic scientific perspectives on the Ratification of the Law on Sexual Violence, Perspectives on Jurisprudence Rules, Maslahah Policies, Leaders. The purpose of this study is to describe the purpose and content of the passage of the Sexual Violence Law and to analyze the ratification of the Sexual Violence Law from the perspective of jurisprudence rules for the benefit of the leader's policy.

METHOD

This research based on normative descriptive research. And then this research actually made by literature studies using primary legal materials of the Sexual Violence Criminal Law specifically Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. That regulation analysed by the Jurisprudence Rules called Rule Of Jurisprudence Maslahah Leader Policy . To support the main material this research used some supported various sources of secondary legal materials such as scientific writings and the latest data from the official website.

RESULT AND DISCUSSION

Purpose and Content of the Passage of the Sexual Violence Law

The Government of Indonesia through the Minister of Women's Empowerment and Child Protection (PPPA), Bintang Puspayoga stated that Law Number 12 of 2022 which was promulgated on May 9, 2022 is a manifestation of the presence of the Indonesian state for the purpose of protecting and fulfilling victims' rights to handling, protection, recovery, law enforcement, rehabilitation of victims and becoming a punishment and deterrent effect for perpetrators.¹⁵ The existence of this law is a real implementation to realize one of the priority issues of the President of the Republic of Indonesia, Joko Widodo to the Ministry of PPPA, namely the third issue in the form of reducing violence against women and children.¹⁶

As for further and detailed based on the Academic Paper of the Sexual Violence Criminal Law, there is a sexual violence criminal law as a form of legal reform. This legal update has 5 main objectives as follows:¹⁷

1. Prevent sexual violence;

¹¹ Zainuddin Puteh dan Dhiauddin Tanjung, "THE USE OF MASK AND STRETCHING THE SHAF OF JUSTICE PRAYERS IN THE PANDEMIC PERIOD IN MUI FATWA NUMBER 31 OF 2020: QAWAID FIQHIYYAH PERSPECTIVE," *Dusturiyah* 12 (2022): 186.

¹² Nadhila Cahya Nurmalasari dan Waluyo Waluyo, "EFEKTIVITAS UNDANG-UNDANG TINDAK PIDANA KEKERASAN SEKSUAL DI INDONESIA," *Sovereignty : Jurnal Demokrasi dan Ketahanan Nasional* 1, no. 1 (2022): 57.

¹³ M. Chaerul Risal, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual Pasca Pengesahan Undang-Undang Tindak Pidana Kekerasan Seksual: Penerapan dan Efektivitas," *Al-Daulah* 11, no. 1 (2022): 75.

¹⁴ Stephani Helen Manuputty, "Analisis Undang-Undang Tindak Pidana Kekerasan Seksual Berdasarkan Teori Formil (Formielle Theorie)," *Sovereignty : Jurnal Demokrasi dan Ketahanan Nasional* 2, no. 1 (2023): 82.

¹⁵ Biro Hukum dan Humas Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, "UU TPKS WUJUD KEHADIRAN NEGARA LINDUNGI KORBAN KEKERASAN SEKSUAL," kemenpppa.go.id, *Siaran Pers* (blog), 2022, <https://www.kemenpppa.go.id/index.php/page/read/29/4015/uu-tpks-wujud-kehadiran-negara-lindungi-korban-kekerasan-seksual>.

¹⁶ PUBLIKASI DAN MEDIA KEMENTERIAN PEMBERDAYAAN PEREMPUAN, "MENTERI BINTANG SOROTI 5 ISU PRIORITAS PEREMPUAN DAN ANAK," kemenpppa.go.id, *Siaran Pers* (blog), 2019, <https://www.kemenpppa.go.id/index.php/page/read/29/2392/menteri-bintang-soroti-5-isu-prioritas-perempuan-dan-anak>.

¹⁷ BADAN LEGISLASI DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA, "NASKAH AKADEMIK RANCANGAN UNDANG-UNDANG REPUBLIK INDONESIA NOMOR... TAHUN... TENTANG TINDAK PIDANA KEKERASAN SEKSUAL" (Naskah Akademik, Jakarta, 2021), 8–9.

2. Develop and implement prevention, handling, protection, and recovery mechanisms that involve the community and have a victim perspective so that the victim can transcend the violence she experienced and become a survivor;
3. Provide justice for victims of sexual violence, through rehabilitation, criminal sanctions, and firm action for perpetrators of sexual violence;
4. Ensure the implementation of state obligations, family roles, community participation, and corporate responsibility in realizing an environment free of sexual violence;
5. Establish a new system that better protects victims from the side of law enforcement and encourages the role of the state to be more responsible for victim recovery efforts and prevention of sexual violence in the future.

The establishment and ratification of this law is also to accommodate 3 foundations, namely philosophical foundations, sociological foundations, and juridical foundations. First, the philosophical basis in question is that this law is an implementation of the Indonesian philosophical system contained in Pancasila, especially in the 2nd precept: "Just and civilized humanity" and the 5th precept; "Keadilan Sosial Bagi Seluruh Rakyat Indonesia." So that the state in this case the Government of Indonesia is responsible for building prevention, handling, protection and recovery mechanisms for victims to get a dignified life so as to realize a sense of justice and legal certainty in society.¹⁸

Second, the sociological basis means that this law is urgent because sexual violence is not just an ordinary crime but appropriate efforts are needed to provide treatment and build preventive measures. This is based on the complexity of sexual violence cases that have been documented, especially by Komnas Perempuan. Therefore, a comprehensive solution is needed as a mechanism for preventing sexual violence as well as protecting and recovering victims.¹⁹

Third, this law is a form of implementation of the constitutional rights of citizens as stated in Article 20, Article 28A, Article 28B paragraph (2), Article 28D paragraph (1), Article 28G paragraph (1) and paragraph (2), Article 28H paragraph (1) and paragraph (2), Article 28I paragraph (1), paragraph (2), paragraph (4), and paragraph (5) and Article 28J paragraph (2) of the Constitution of the Republic of Indonesia Year 1945. The core objective is juridically as the embodiment of the mandate to protect human rights and constitutional rights of citizens from all forms of discrimination and sexual violence. So that it is then realized in detail through a review of the legal substance, legal structure, and legal culture.²⁰

Based on these objectives, it is formulated in the weighing section of the law:²¹

1. That everyone has the right to protection from violence and the right to be free from torture or degrading treatment as guaranteed in the 1945 Constitution of the Republic of Indonesia;
2. That sexual violence is contrary to divine and human values and disturbs the security and peace of society;
3. That laws and regulations relating to sexual violence have not been optimal in providing prevention, protection, access to justice, and recovery, have not met the needs of victims of Sexual Violence Crimes, and have not been comprehensive in regulating procedural law.

The content of Law Number 12 of 2022 concerning Sexual Violence is that there are 12 chapters detailed into 93 articles in it. The details are Chapter I on General Provisions; Chapter II on Sexual Violence; Chapter III on Other Crimes Relating to Sexual Violence; Chapter IV on Investigation, Prosecution, and Examination in Courts; Chapter V on the Rights of Victims, Victims' Families, and Witnesses; Chapter VI on the Implementation of Integrated Services for the Protection of Women and Children at the Central and Regional Levels;

¹⁸ BADAN LEGISLASI DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA, 99–101.

¹⁹ BADAN LEGISLASI DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA, 101–6.

²⁰ BADAN LEGISLASI DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA, 106–12.

²¹ Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia, Tindak Pidana Kekerasan Seksual.

Chapter VII on Prevention, Coordination, and Monitoring; Chapter VIII on Community and Family Participation; Chapter IX on Funding; Chapter X on International Cooperation; Chapter XI on Transitional Provisions; and Chapter XII on Concluding Provisions. Then finally attached also Explanation so that the overall content of this law is 84 pages that have been entered as an addition to the state gazette of the Republic of Indonesia Number 6792.²²

The main content of this law can be reflected into 6 elements that regulate:

1. Sexual Violence

The definition of sexual violence based on this law is all acts that meet the elements of a criminal act as stipulated in this law and other acts of sexual violence as stipulated in this law as long as specified in this law.²³ Furthermore, sexual violence in question is any act of degrading, insulting, attacking, and other acts against one's body, sexual desire, and reproductive function forcibly against one's will to cause a person to be unable to give consent in a free state due to inequality of power relations or gender relations that result in physical, psychological, sexual suffering, economic, social, cultural, and political losses.²⁴

The variety of sexual violence crimes in this law is also very comprehensive, namely non-physical sexual harassment; physical sexual abuse; forced contraception; forced sterilization; forced marriage; sexual torture; sexual exploitation; sexual slavery; electronic-based sexual violence; rape; obscene acts; Promiscuity; obscene acts; and exploitation of children; acts of violating decency against the will of the victim; pornography involving children or pornography that explicitly contains sexual violence and exploitation; forced prostitution; criminal acts of trafficking in persons intended for sexual exploitation; sexual violence in the domestic sphere; money laundering crimes whose original crime was a criminal act of sexual violence; as well as other crimes that are expressly stated as criminal acts of sexual violence as stipulated in the provisions of laws and regulations.²⁵

2. Penalties (Sanctions and Actions)

This law stipulates in detail and detail the punishment sanctions that differ depending on the type of sexual violence committed. However, broadly speaking, this law applies the main criminal system in the form of imprisonment, fines, restitution (compensation), and other crimes according to the provisions of the law. In addition to the principal crime, additional crimes are also regulated such as revocation of child custody or custody; announcement of the identity of the perpetrator; to the seizure of profits or assets obtained from the proceeds of sexual violence. And finally, rehabilitation measures are also given both medically and socially.²⁶ The sanctions and actions given are basically expected to be able to provide a deterrent effect both for the perpetrators and for the potential perpetrators so that they no longer dare to commit criminal acts of sexual violence.²⁷

3. Special Procedure Law

This special procedural law is based on article 20 which states "Penyidikan, penuntutan, dan pemeriksaan di sidang pengadilan terhadap Tindak Pidana Kekerasan Seksual dilaksanakan berdasarkan Undang-Undang yang mengatur mengenai hukum acara pidana, termasuk yang diberlakukan secara khusus dalam

²² Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia.

²³ Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia.

²⁴ Bratadewa Bima Bayusuta dan Yohanes Suwanto, "ANALISIS YURIDIS UNDANG-UNDANG TINDAK PIDANA KEKERASAN SEKSUAL DALAM PENEGAKAN HUKUM DI INDONESIA," *Sovereignty : Jurnal Demokrasi dan Ketahanan Nasional* 1 (2022): 41.

²⁵ Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia, Tindak Pidana Kekerasan Seksual.

²⁶ Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia.

²⁷ I Ketut Mertha, *Efek Jera Pemiskinan Koruptor dan Sanksi Pidana* (Denpasar: Udayana University Press, 2015), 11.

penanganan perkara Tindak Pidana Kekerasan Seksual tertentu, kecuali ditentukan lain dalam Undang-Undang ini." As for the criminal act of sexual violence using complaint offenses, except for victims with disabilities and child victims passing ordinary offenses.²⁸

4. Elaboration and Certainty of Fulfillment of Rights

The law also clearly stipulates rights for victims, victims' families and witnesses. As for the rights of victims, there are 3 rights that are fulfilled in the form of the right to treatment, the right to protection, and the right to recovery. These rights are administered by integrated services for the protection of women and children both at the central and regional levels coordinated directly by the Minister.²⁹ This is a manifestation of one of the implementation of the mandate of state objectives in the preamble to the Constitution of the Republic of Indonesia in 1945, namely protecting the entire Indonesian nation and all Indonesian bloodshed.³⁰ Moreover, the majority of victims are women who are said to be a Middle Eastern proverb as the Pillar of the State.³¹ And the victims are also not a few of the children who must be protected because they are human beings investing in the future of their religion, nation and country.³²

5. Prevention and the Role of Society and Family

Although in efforts to prevent, coordinate, and monitor the central and local governments must implement quickly, integrated, and integrated, active participation is still needed from two important elements in efforts to prevent sexual violence, namely the role of the community and also the role of the family.³³ This is important considering that these two elements are closest to the surrounding conditions. The community and family are expected to be able to help the government for socialization as well as in the process of recovering victims.³⁴

6. Monitoring by Ministers, National Human Rights Institutions and Civil Society

In this case, monitoring is certainly carried out by relevant stakeholders, especially the Minister of Women's Empowerment and Child Protection who is in charge of organizing government affairs in the field of women's empowerment and child protection. Then supported by national institutions both Komnas HAM and Komnas Perempuan dan Anak. And of course supported by civil society to prevent and take action against criminal acts of sexual violence.

Analysis of the Passing of the Law on Sexual Violence Perspectives on Jurisprudence Rules for the Benefit of Leaders' Policies

Based on the purpose and content of Law Number 12 of 2022 concerning the Criminal Act of Sexual Violence, it is analyzed by a branch of jurisprudence agreed by scholars regarding the benefits of the following leaders' policies:

تَصَرَّفُ الْإِمَامُ عَلَى الرَّعِيَّةِ مَنُوطٌ بِالْمَصْلَحَةِ

It means: "The actions of the leader (Imam) towards his people must be linked to the benefit."³⁵

This rule is based on the words of Allah Almighty in the following Qur'an:

وَإِذْ ابْتَلَىٰ إِبْرَاهِيمَ رَبُّهُ بِكَلِمَاتٍ فَأَتَمَّهُنَّ ۖ قَالَ إِنِّي جَاعِلُكَ لِلنَّاسِ إِمَامًا ۖ قَالَ وَمِنْ ذُرِّيَّتِي ۖ قَالَ لَا يَنَالُ عَهْدِي الظَّالِمِينَ ۝ ١٢٤

²⁸ Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia, Tindak Pidana Kekerasan Seksual.

²⁹ Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia.

³⁰ Republik Indonesia, "UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945" (t.t.).

³¹ Latipah Nasution, "Potret Perempuan Dalam Bingkai Ketatanegaraan," *Adalah: Buletin Hukum dan Keadilan* 3 (2019): 134.

³² Harun Rasyid, "MEMBANGUN GENERASI MELALUI PENDIDIKAN SEBAGAI INVESTASI MASA DEPAN," *Jurnal Pendidikan Anak* IV (2015): 570.

³³ Dewan Perwakilan Rakyat Republik Indonesia dan Presiden Republik Indonesia, Tindak Pidana Kekerasan Seksual.

³⁴ Bayusuta dan Suwanto, "ANALISIS YURIDIS UNDANG-UNDANG TINDAK PIDANA KEKERASAN SEKSUAL DALAM PENEGAKAN HUKUM DI INDONESIA," 42.

³⁵ Ibrahim, *AL-QAWA'ID AL-FIQHIYAH (KAIDAH-KAIDAH FIQIH)*, 109.

Meaning: "And (remember), when Abraham tested his Lord with a few sentences, then he carried it out perfectly. He (God) said, "Behold, I make you the leader of all men." He (Ibrahim) said, "And (also) from my posterity?" God said, "My promises do not apply to the wicked."³⁶

The foundation of the hadith of the Holy Prophet Muhammad saw. follows:

لَكُمْ رَاعٍ وَلكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ

It means: "You are leaders and all of you will be held accountable for their leadership."³⁷

Furthermore, this rule is reinforced by a fatwa from Caliph Umar bin Khattab which reads: "Verily I place myself against the treasure of Allah Almighty, like the position of a guardian towards orphans. If I need it I take some of it and if there is any leftover I give it back and if I don't need it then I leave it."³⁸

This rule is included in the rules of fiqh siyasah which specifically discusses the regulation of the interests of mankind in general and the state in particular in the form of the establishment of laws, regulations, and policies of power holders.³⁹ This rule is a guideline for leaders or governments in taking policies related to the people because they hold the mandate to provide benefits to their people in determining policies.⁴⁰ This is in line with the main rule of jurisprudence as stated by Shaykh Izzudin Ibn Abd al-Salam, namely that the purpose of sharia is to achieve benefit and reject affirmation.⁴¹ When related to the context of this study, it is trying to realize benefits by passing the Sexual Violence Criminal Law and rejecting the problem of sexual violence that is rampant in Indonesia.

Analysis of the passage of the sexual violence criminal law can be viewed from 2 aspects, namely theoretically and practically. *First*, when viewed from the theoretical aspect that the Indonesian government's policy in making and passing laws on sexual violence crimes has caused benefits and benefits in it. This is shown by the purpose of the establishment and ratification of this law, namely protecting and fulfilling the rights of victims to handling, protection, recovery, law enforcement, rehabilitation of victims and becoming a punishment and deterrent effect for perpetrators and as a prevention of future sexual violence.⁴² This goal theoretically has shown a beneficial policy from the Government of Indonesia to eradicate sexual violence that is still prevalent in Indonesia.

Then, in essence, Law Number 12 of 2022 concerning Sexual Violence Criminal Acts has regulated comprehensively and comprehensively in regulating the problem of sexual violence crimes. This is evidenced by the complete arrangements ranging from prevention, enforcement and sanctions, as well as recovery for victims. The government in this case has compiled so neatly about this law as it has been fully stated in its academic text. Because of the benefit that is the dream for everyone or the people of a leader.⁴³ This is also manifested from the statement of the Chairman of Komnas HAM of the Republic of Indonesia, Atnike Nova Sigoro, that the existence of a sexual violence criminal law has been awaited by many parties to provide legal

³⁶ Hamim Tohari, *Tikrar Al-Qur'an Hafalan Tajwid dan Terjemahan* (Bandung: sygma creative media corp., 2017), 19.

³⁷ Ibrahim, *AL-QAWA'ID AL-FIQHIYAH (KAIDAH-KAIDAH FIQIH)*, 110.

³⁸ Ibrahim, 110.

³⁹ Toha Andiko, *ILMU QAWA'ID FIQHIYAH Panduan Praktis Dalam Merespon Problematika Hukum Islam Kontemporer* (Yogyakarta: Penerbit Teras, 2011), 162.

⁴⁰ Ibrahim, *AL-QAWA'ID AL-FIQHIYAH (KAIDAH-KAIDAH FIQIH)*, 110.

⁴¹ Mif Rohim, *Buku Ajar Qawa'id Fiqhiyyah (Inspirasi dan Dasar Penetapan Hukum)* (Jombang: LPPM UNHAS YTEBUIRENG JOMBANG, 2019), 101.

⁴² Biro Hukum dan Humas Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, "UU TPKS WUJUD KEHADIRAN NEGARA LINDUNGI KORBAN KEKERASAN SEKSUAL."

⁴³ Abnan Pancasilawati, "URGENSI KAJIDAH FIKIH DAN APLIKASINYA TERHADAP MASALAH MASALAH SOSIAL," *FENOMENA IV* (2012): 158.

certainty in handling sexual violence oriented to protect victims and justice for victims of sexual violence.⁴⁴

But of course no one is perfect in this world except Allah Almighty. God Almighty. This also happens to the theoretical benefits of the sexual violence criminal law which has also not met a perfect and universal benefit. As stated by the Deputy for Special Protection of Children of the Ministry of PPPA, Nahar that implementing regulations are still needed for the sexual violence criminal law. Even without implementing regulations, the law can still be implemented by law enforcement officials in Indonesia.⁴⁵

Second, it is in the practical aspect. That the passage of Law Number 12 of 2022 concerning Sexual Violence which was officially passed on May 9, 2022 is classified as a very young regulation, not even a year old. So that in practice there are not many who use or even have not been used. When referring to the page of the Legal Documentation and Information Network (JDIH) of the House of Representatives of the Republic of Indonesia that there has been no implementation of this law. But empirically it turns out that there are already those who use it. This is as the decision of the Malang District Court Judges against JE for the sexual violence case he had committed even though the case occurred before the passing of this law.⁴⁶

However, there are still many practical implementations that have not caused benefits according to the policies expected by the leader, in this case, the Government of Indonesia. This is as evidenced by the initial response of one of the police chiefs in Gresik who stated that the case of a man kissing a girl without his permission was not a criminal act of sexual violence on the grounds that he did not take off his clothes.⁴⁷ This sad fact should be a lesson that the Sexual Violence Criminal Law, which according to Lawrence Friedman's Theory as a legal substance, cannot be implemented effectively and optimally if the legal structure of its law enforcement officers does not know and understand the legal substance so that the legal culture in society will be difficult to implement.

CLOSING

That the purpose and content of the passing of this law is as an effort to reform a comprehensive legal umbrella to realize handling, protection, and prevention of the community in general and victims of sexual violence in particular. The content of this law consists of 6 elements in the form of Criminal Acts of Sexual Violence, Penalties, Special Procedure Law, Elaboration and Certainty of Fulfillment of Rights, Prevention and Role of Society and Family, and Monitoring by Ministers, National Human Rights Institutions and Civil Society.

That if viewed and analyzed from the rules of jurisprudence that theoretically the passage of this law has implemented the policy of a leader who is *maslahah* based on the content of the article in it even though it is not perfect. However, practically it cannot be

⁴⁴ Komnas HAM, "Implementasi UU TPKS, Komnas HAM Optimistis Ada Jaminan Pelindungan dan Keadilan Bagi Korban," *komnasham.go.id, Kabar Latuهارhary* (blog), 2022, <https://www.komnasham.go.id/index.php/news/2022/12/5/2278/implementasi-uu-tpks-komnas-ham-optimistis-ada-jaminan-pelindungan-dan-keadilan-bagi-korban.html>.

⁴⁵ Fatimatuz Zahra, "UU TPKS Berlaku, Mengapa Korban Kekerasan Seksual Belum Juga Aman?," Yayasan Kesehatan Perempuan, *Artikel* (blog), 2022, <https://ykp.or.id/uu-tpks-berlaku-mengapa-korban-kekerasan-seksual-belum-juga-aman/>.

⁴⁶ Biro Hukum dan Humas Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, "KEMENPPPA MENGAPRESIASI PUTUSAN MAJELIS HAKIM PN MALANG YANG MEWAJIBKAN PELAKU BERIKAN RESTITUSI KEPADA KORBAN TPKS," *kemenpppa.go.id, Siaran Pers* (blog), 2022, <https://www.kemenpppa.go.id/index.php/page/read/29/4095/kemenpppa-mengapresiasi-putusan-majelis-hakim-pn-malang-yang-mewajibkan-pelaku-berikan-restitusi-kepada-korban-tpks>.

⁴⁷ Zahra, "UU TPKS Berlaku, Mengapa Korban Kekerasan Seksual Belum Juga Aman?"

categorized as a masalah leader policy because this law has just been passed and has not been implemented in society as a whole and is only partially applied to certain cases.

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