



Gender Politics Law On Sexual Violence In Indonesia: Women's Involvement In Developing Responsive Laws

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ABSTRACT

This research is motivated by the hypothesis that Law no. 12 of 2022 concerning Crimes of Sexual Violence is influenced by gender political contestation. Women are the actors behind the emergence of these policies so that they are involved in the contestation of formation and ratification. Therefore the focus of this research is the involvement of women in the political contestation of the TPKS Law. This research is a juridical-normative type of research using gender, historical, and philosophical approach which are then analyzed using legal political theory. So it was concluded that women and gender activists initiated and advocated for the TPKS Law in a comprehensive and professional manner, namely by means of; First, presenting a gender equality paradigm in the TPKS Law. Second, advocacy and stakeholder engagement. Third, the synergy between women activists and the community, Parliamentary Women's Caucus of Republic of Indonesia (KPP RI), the Ministry of Women's Empowerment, political parties, executive and legislative institutions. Not only that, we conclude that the involvement of women in the drafting of the TPKS Law indicates that women play an active role in building gender-responsive national laws. This can be seen from three indicators, namely participatory, aspirational, and limitative.

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PRELIMINARY

The ratification of Law Number 12 of 2022 concerning Law on Sexual Violence Crimes (hereafter the TPKS Law) was well received by all elements of society. Maharani as Chair of the House of Representatives (hereinafter DPR) argued that the TPKS Law was a gift for victims of sexual violence, especially Indonesian women who needed a legal Protection.¹ The Minister of Women's Empowerment and Child Protection (Kemenpppa RI) Darmawati also emphasized that the TPKS Law is a lex specialist that can provide comprehensive protection

¹ CNN Indonesia, "Puan Menangis Sahkan UU TPKS: Ini Hadiah Bagi Perempuan Indonesia," CNN Indonesia, 2023, <https://www.cnnindonesia.com/nasional/20220412141911-32-783754/puan-menangis-sahkan-uu-tpks-ini-hadiah-bagi-perempuan-indonesia>.

for victims of sexual violence.² Indonesian gender leader and female cleric, Rofi'ah emphasized that the presence of the TPKS Law greatly protects and provides a sense of security for women.³ The existence of the TPKS Law signifies a new chapter in the journey of gender construction in policies that are responsive to community needs.

The emergence of the TPKS Law signifies two main points, namely; First, there is reformulation and progressive law that regulates sexual violence. Because the Criminal Code (KUHP) still tends to be limited and narrow in scope. Second, there is a legal protection that deals with various forms of sexual violence that befall women and children in Indonesia.⁴ Adiputra stated that the existence of the TPKS Law was an urgent legal product, this was due to the high number of women as victims of sexual violence.⁵ Other research also states that many cases of violence refer to the formation of the TPKS Law.⁶

The results of this research are not wrong, because sociologically the TPKS Law is motivated by the large number of victims of sexual violence, especially women and children, who are in a difficult situation to get recognition as victims. There is a stigma that victims as actors of sexual violence occur because they cannot maintain honor and self-esteem. This is also strengthened by a social culture that still lacks knowledge about the factors and causes of sexual violence.⁷

Meanwhile, from a philosophical perspective, efforts to criminalize sexual violence are an attempt to fulfill a sense of humanity which has coherence with Pancasila values, especially in the 2nd precept which reads "Just and civilized humanity". Rahayu in his research added that other philosophical foundations follow from the 5th precept which has an explanation that humans must be treated according to dignity as creatures of God Almighty and maintain a balance between rights and obligations.⁸ Meanwhile, from a juridical perspective, the TPKS Law is motivated by the existence of a national legal substance that does not comprehensively regulate sexual violence. Even though

² Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, "UU TPKS Wujud Kehadiran Negara Lindungi Korban Kekerasan Seksual," Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2023, <https://www.kemenpppa.go.id/index.php/page/read/29/4015/uu-tpks-wujud-kehadiran-negara-lindungi-korban-kekerasan-seksual>.

³ Fachrul Misbahudin, "Tok!!! RUU TPKS Disahkan DPR, Ini Tanggapan Ulama Perempuan," Mubadalah, accessed May 5, 1BC, <https://mubadalah.id/tok-ruu-tpks-disahkan-ini-tanggapan-ulama-perempuan/>.

⁴ Topo Santoso and Hariman Satria, "Sexual-Violence Offenses in Indonesia: Analysis of the Criminal Policy in the Law Number 12 of 2022," *Padjajaran Journal of Law* 10, no. 12 (2023): 59–79, <https://doi.org/https://doi.org/10.22304/pjih.v10n1.a4> Submitted:

⁵ Setiawan Adiputra, Agsel Awanisa, and Yemina Hotmaria Purba, "The Urgency of the Law on Sexual Violence Criminal Act in Combating Sexual Violence in Indonesia," *Ius Poenale* 3, no. 2 (2022): 25–38, <https://doi.org/https://doi.org/10.25041/ip.v3i1.2521>.

⁶ research by Rizki and Hanum which explains the index of violence against Indonesian women is 0.0024. See Anisa Rizki and Farida Hanum, "Quo Vadis Gender Mainstreaming Policy to Fight Against the Prevalence of Gender-Based Violence in Indonesia" 398, no. ICoSSCE 2019 (2020): 147–53, <https://doi.org/10.2991/assehr.k.200130.031>. Hulahi, et al also explained that in 2021 sexual violence reached 7,784 cases, see Ekklesia Hulahi et al., "The Role of the Government of Indonesia in Handling Cases of Sexual Violence Against Women.," *Journal of Governance* 7, no. 1 (2022): 214–21, <https://doi.org/10.31506/jog.v7i1.14143>. Setyowati and Rusdiana also explained that the amount of violence, especially in the domestic sphere, was not comprehensively recorded, with a percentage reaching 13%, see Dewi Setyowati and Emmilia Rusdiana, "Relevance of Criminal Law Formulation In The Law Of Domestic Violence Elimination In Indonesia," *JILS (JOURNAL OF INDONESIAN LEGAL STUDIES* 5, no. 2 (2020): 95–124, <https://doi.org/https://doi.org/10.15294/jils.v5i1.35362>.

⁷ Badan Legislasi DPR RI, "Naskah Akademik Rancangan Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual" (Jakarta, 2021), <https://jdih.kemenpppa.go.id/dokumen-hukum/monografi-hukum/5>.

⁸ Ninik Rahayu, *Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia* (Jakarta: Bhuana Ilmu Populer, 2021).

constitutionally the rights of citizens are regulated in the 1945 Constitution of the Republic of Indonesia.⁹

In *das sein*, the presence of the TPKS Law can be said to be a sign of the presence of women's activities in the public space to express aspirations. In this case, women and those who are pro against the elimination of sexual violence are one of the political factors in the passing of the TPKS Law. Member of the Legislation Committee (Baleg), Aryani explained that the TPKS Law was the result of women's struggles.¹⁰ In his research, Kurniawan uncovered women as central figures in overseeing the ratification of the TPKS Law. Feminists are actively advocating, hearing the public in voicing the TPKS Bill.¹¹ In addition, the support of political parties (political parties) such as the NasDem, PDIP, Golkar, Gerindra, Demokrat, and PKB strengthened the political factors that developed in the ratification of the TPKS Law.

In the context of legal policy, politics often intervenes in the making and implementation of laws. This also happened to the TPKS Law, the researchers assumed that it was a political product involving women. As Arbi Sanit's opinion quoted by Mahfud states, the development of law is always influenced by the political role of the masses, the middle class and the elite.¹² Wheare also argues that legislation is the product of political agreements (*resultante*) so that the political atmosphere within greatly influences or determines the legal product.¹³ Kelsen also argues that every political situation that creates law legally is a legal product as far as the government can do it.¹⁴

As concrete evidence that the TPKS Law is a political product, it can be seen from the political configuration in the TPKS Bill. The drafting of the TPKS Bill has entered the Prolegnas several times, such as in 2016 which later failed due to the pros and cons as a political atmosphere.¹⁵ Then in 2021 the TPKS Bill will become a priority Prolegnas at the initiative of Legislation Committee and the Ministry of Law and Human Rights (Kemenkumham).¹⁶ Then legally on April 12 2022 the TPKS Bill became the TPKS Law in the Plenary Meeting of the House of Representatives (DPR RI).¹⁷

The country's political constellation does have a great opportunity to determine the direction of the laws that are born. The TPKS Law as a legal product is nothing but the formalization or crystallization of competing political wills either through compromise or through the domination of political forces.¹⁸ As revealed by Daniel S. Lev, if there is a

⁹ Badan Legislasi DPR RI, "Naskah Akademik Rancangan Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual." hlm. 106

¹⁰ Fraksi Partai Golkar DPR, "RUU TPKS Disahkan, Christina Aryani: Buah Perjuangan Perempuan Indonesia", Fraksi Partai Golkar DPR RI, 2023, <https://fraksigolkar.or.id/ruu-tpks-disahkan-christina-aryani-buah-perjuangan-perempuan-indonesia/>.

¹¹ Toni Kurniawan and Anna Zakiah Derajat, "Peran Legislator Perempuan Dalam Mengawal Pengesahan Ruu TpkS," *Jurnal Harkat: Media Komunikasi Gender* 18, no. 2 (2022): 1-16, <https://doi.org/10.15408/harkat.v18i2.23753>.

¹² Moh. Mahfud, *Politik Hukum Di Indonesia* (Depok: Rajawali Press, 2020).

¹³ K.C. Wheare, *The Modern Constitutions*, 3rd ed. (London-New York-Toronto: oxford university press, 1975).

¹⁴ Hans Kelsen, *General Theory of Law and State* (Cambridge: Harvard University Press, 1945).

¹⁵ Aisyah Chairil, "Politik Hukum Islam Dalam Proses Pembahasan Rancangan Undang-Undang Penghapusan Kekerasan Seksual (RUU PKS) Di Indonesia," *Tesis* (UIN Sunan Kalijaga Yogyakarta, 2021).

¹⁶ Iskandar, Nurul Huda, and Nursiti, "Politik Hukum Pembuatan Rancangan Undang-Undang Kekerasan Seksual Perspektif Hukum Islam," *Asy-Syari'ah* 23, no. 1 (2021): 162, <https://doi.org/DOI:10.15575/as.v23i1.12150>.

¹⁷ Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170-96, <https://doi.org/10.14710/jphi.v4i2.170-196>.

¹⁸ In his book, Mahfud explains that if law is conceptualized as a law made by a legislature, it cannot be denied that law is a formalization of political ideals. See Mahfud, *Politik Hukum Di Indonesia*, Hlm. 5.

relationship between politics and law, then the law is the dependent variable from politics, because this is the law in Indonesia that intervenes politically.¹⁹

The existence of the political legal paradigm of the TPKS Law in the form of the participation of the women's movement in the public sphere which is confronted (*vis a vis*) with the constellation of the country's political atmosphere, then the assumption that the TPKS Law is a political product as has been described, makes this study interesting to be used as an object of research. At least the researcher wants to direct this research to how is the involvement of women in the current contestation of the TPKS Law? Then when discussing legal politics as explained by Mahfud, it will be found how women's involvement in shaping the character of gender-responsive legal products?

The study of the TPKS Law has actually been extensively researched by several previous researchers, such as Chairil who discussed the pros and cons and politics of Islamic law in the ratification of the TPKS Bill.²⁰ Rahayu who studied the legal political concept of the TPKS Law.²¹ Iskandar, et al who examined the legal politics of the TPKS Bill from the perspective of Islamic law.²² Huda and Astrovanapoe who discovered the contribution of Islamic Law in the TPKS Bill.²³ Adiputra, et al who discussed the urgency of the TPKS Law.²⁴ Aryani who revealed the polemic on the ratification of the TPKS Bill.²⁵ Then Santoso and Satria discussed the policy analysis of the TPKS Law.²⁶

Meanwhile, to strengthen the distinction and novelty with previous research, the strength of this research is to explain women's involvement in the political contestation of the TPKS Law. We argue that women took part in the formation of the TPKS Law by initiating and advocating for the policy. We also argue that women's involvement in the formation of the TPKS Law is nothing but their participation in creating gender-responsive laws.

Then this type of research includes the category of legal research (normative legal research) with a gender, historical and philosophical approach.²⁷ Another uniqueness is that this legal political research on the TPKS Law uses the legal political theory developed by Mahfud MD in his book entitled "Politik Hukum di Indonesia". The theory rests on political determination of law so that law is a political product. In this research politics as an independent variable is distinguished between democratic politics and authoritative politics. Meanwhile, the TPKS Law is a dependent variable which is distinguished by responsive law and orthodox law. So that this research will give birth to a political configuration of the TPKS Law that is democratic-responsive or authoritative-orthodox.²⁸

METHOD

¹⁹ Daniel S. Lev, *Islamic Courts in Indonesia* (Barkeley: University of California Press, 1972). Hlm. 2

²⁰ Chairil, "Politik Hukum Islam Dalam Proses Pembahasan Rancangan Undang-Undang Penghapusan Kekerasan Seksual (RUU PKS) Di Indonesia."

²¹ Rahayu, *Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia*.

²² Iskandar, Huda, and Nursiti, "Politik Hukum Pembuatan Rancangan Undang-Undang Kekerasan Seksual Perspektif Hukum Islam."

²³ Muhammad Wahyu Saiful Huda and Syahlila Umayya Astrovanapoe, "Contribution of Islamic Law to the Draft Law on the Elimination of Sexual Violence," *Jurnal Scientia Indonesia* 7, no. 2 (2021): 123–44, <https://doi.org/https://doi.org/10.15294/jsi.v7i2.36147>.

²⁴ Adiputra, Awanisa, and Purba, "The Urgency of the Law on Sexual Violence Criminal Act in Combating Sexual Violence in Indonesia."

²⁵ Ratu Sri, Andi Aryani, "Analisis Polemik Pengesahan RUU Tindak Pidana Kekerasan Seksual (TPKS)," *Najwa: Jurnal Muslimah Dan Studi Gender* 1, no. 1 (2021): 30–49.

²⁶ Santoso and Satria, "Sexual-Violence Offenses in Indonesia: Analysis of the Criminal Policy in the Law Number 12 of 2022."

²⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

²⁸ Mahfud, *Politik Hukum Di Indonesia*. Hlm. 7

In this section, it is necessary to describe the research progress as accurately and correctly as possible, indicating all the details. you should explain your data sources in detail. if your data comes from informants then you should disguise their identity. also explain how informants were selected. if your sources are secondary data explain how much data you took. the writer should also explain the approach and data analysis techniques.

RESULT AND DISCUSSION

Women and Gender Political Contestation in the Formation of Sexual Violence Crime Law

The emergence of the TPKS Law cannot be separated from the presence of the role of women in parliament. The role of women when compared during the New Order era was very different from the reform era. During the New Order Government period, important issues related to gender were not yet massively discussed, even during the New Order Government, formal political discussions and power transfers were inappropriate to discuss. Meanwhile, when the reformation period brought a change at the level of the political system in Indonesia, namely politics from an authoritarian system to a democratic system. This is marked by the strengthening of recognition of Human Rights and the existence of reform agendas regarding gender and women's rights.²⁹

The reform era opened up political space and civil society involvement to encourage the democratization of the country, so that the women's movement saw that this was a moment to advocate for women's agendas on the political stage. Sigiuro revealed that the democratic agenda finally opened women's circles represented by feminists to question whether women's involvement could be substantively realised. Furthermore, feminists began to formulate strategies in the reform era with the concept of critical actors which encouraged a collective feminist movement to create policies with a gender perspective.³⁰

A more open perspective on gender in the public space paved the way and also influenced the configuration of legal politics in Indonesia. Starting from the emergence of a policy to eliminate domestic violence, namely in 2004 (UU PKDRT) made women voice pro-women policies. After the 2014 elections, women have become more massive, so they have a very strong influence compared to the previous few years. This influence began with the increasing representation of women in political parties who became legislative candidates (Caleg). Cakra Wikara Indonesia presented data that almost all political parties in 2019 had percentages above 30% and female candidates received 24.01%.³¹ The increase in this number means that democracy in Indonesia is getting stronger. The more women in parliament, the more gender perspective policy development will also increase.

The early embryos of the TPKS Law began to be seen in 2010, the contents of the material began to be designed and made into discussions in legal discourse within certain groups. The increase in cases of sexual violence such as sexual, physical and psychological implications for victims has prompted the community and non-governmental organizations (NGO) to take the initiative to propose the Law on the Elimination of Sexual Violence (RUU PKS), which is currently known as the UU TPKS. Not only that, in the perspective of legal culture, law enforcers' assessment of women as victims of sexual violence neglects the

²⁹ Anita Dhewy and Bella Sandiata, "Political and Legal Novelty as the Contribution of Indonesian Women's Movement in the Advocacy on Affirmative Policy in Election and Law on the Abolition of Domestic Violence," *Jurnal Perempuan* 24, no. 1 (2019): 77-87, <https://doi.org/http://dx.doi.org/10.34309/jp.v24i2.324>.

³⁰ Atnike Nova Sigiuro, "Strengthening Substantive Representation of Women through the Engagement Model of the Women's Movement with the DPR and DPRD in Indonesia," *Jurnal Perempuan* 24, no. 2 (2019): 115-23.

³¹ Cakra Wikara Indonesia, "Data Geospasial: Analisis Kekuatan Perempuan Di DPR RI Dan DPRD Pasca Pemilu 2019," *Cakra Wikara Indonesia* (Jakarta Selatan, 2019), <https://cakrawikara.id/2019/10/diskusi-keterwakilan-perempuan-dalam-agenda-politik-pasca-pemilu-2019/>.

victim's perspective. The stigma that develops is as if women were wrong in every act of sexual crime. The rapid growth of the community accompanied by a parliamentary political atmosphere that supports gender equality has made the PKS Bill more intensely discussed, but the consequences of a democratic atmosphere are starting to be seen. The large number of aspirations showing pros and cons made the PKS Bill very slow in finding the right formulation for the TPKS Bill in the dynamics of legislation.

In 2016 The National Commission on Violence against Women (Komnas Perempuan) and the Service Providers Forum (FPL) submitted the academic manuscript of the PKS Bill to committee III Regional Representatives Council (DPD RI). The proponents were Nihayatul Wafiroh (F-PKB) and Ammy Amalia (F-PAN) who were supported by Rahayu Saraswati (F-Gerindra) and Diah Pitaloka (F-PDIP).³² The draft of the PKS Bill which was signed by 70 members of the House of Representatives (DPR RI) was then followed up in 2017 with number LG/06211/DPR RI/IV/2017. Legislation Committee (Baleg) completed harmonization of the text with several laws and agreed that the PKS Bill would be included in the 2016-2019 National Legislation Program. The response to the PKS Bill also came from the president through letter number R.25/Pres/06/2017 which assigned the Ministry of Women's Empowerment and Child Protection (KemenPPPA), Ministry of Social Affairs (Kemensos), Ministry of Home Affairs (Kemendagri), Ministry of State Apparatus Empowerment (Kemenpanrb), the Ministry of Law and Human Rights (Kemenkumham), and the ministry of health (kemenkes) contributed to discussing and drafting the PKS Law.³³

In 2017 the Ministry of Women's Empowerment and Commission VIII of the the House of Representatives (DPR RI) began discussing the PKS Bill, the meeting produced at least four points, namely: 1). Regarding the subject matter of the PKS Bill, 2). Concerning the Problem Inventory List (DIM) of the PKS Law in a fixed category, changes to articles and substance that will be discussed by the Working Committee (Panja), 3). Regarding the agreement that the Problem Inventory List (DIM) of the PKS Bill is in an editorial category which will be discussed by the Formulator and submitted to the Working Committee, 4). Regarding the formation of the PKS Bill Working Committee. Thus in December 2017 the PKS Bill was included in the 2018 priority National Legislation Program.³⁴

Since 2018 discussions on the PKS Bill have been intensively carried out, advocacy continues to be carried out by non-governmental organizations (NGO), political party cadres, women activists by opening Group Discussion Forums (FGD), scientific studies, discussions, seminars and so on. However, the debate continues among academics, activists or political parties in parliament. Throughout 2018-2019 the discussion of the bill in Commission VIII of the the House of Representatives (DPR RI) was still tough. This can be seen in the timeline table below;

Table 1 regarding the contestation timeline for discussing the 2018-2019 TPKS Bill³⁵

Tanggal	Aktor	Pembahasan
23 Januari 2018	Working Committee Commission VIII the House of Representatives (DPR RI), The National Commission on Violence against Women	<ul style="list-style-type: none"> ➤ Confirmation of the definition of sexual violence. ➤ Elements of gender relations. ➤ Sexual harassment phrase.

³² Cakra Wikara Indonesia, "10 Tahun Perjalanan RUU TPKS Menjadi UU TPKS," *Cakra Wikara Indonesia* (Jakarta Selatan, 2022), <https://cakrawikara.id/wp-content/uploads/2022/05/15-Apr-2022-10-Tahun-Perjalanan-RUU-TPKS-menjadi-UU-TPKS.pdf>.

³³ ICJR, "Perjalanan (Panjaaaang) Menanti RUU Penghapusan Kekerasan Seksual Bagaimana Perjalanannya Dan Apa Yang Harus Didorong Ada Dalam RUU PKS" (Jakarta Selatan, 2022), <https://icjr.or.id/wp-content/uploads/2022/01/final-to-upload-draft-progress-report-RUU-PKS-.pdf>.

³⁴ ICJR.

³⁵ ICJR.

	(Komnas Perempuan), and the Service Providers Forum (FPL)	<ul style="list-style-type: none"> ➤ Harmonization with the Draft Criminal Code. ➤ Accuracy of the title of the Bill on the Elimination of Sexual Violence.
29 Januari 2018	Working Committee Commission VIII the House of Representatives (DPR RI), and Jurist: Prof. Dr. Ir. Euis Sunarti, M.Si, Dr. Chairul Huda, M.H., Prof, Dr. Topo Santoso, M.H.	<ul style="list-style-type: none"> ➤ Paradigm and approach to the Bill on the Elimination of Sexual Violence. ➤ Techniques for formulating criminal law norms. ➤ The legal framework for sexual violence. ➤ Systematic Bill on the Elimination of Sexual Violence.
31 Januari 2018	Working Committee Commission VIII the House of Representatives (DPR RI), and Family Love Alliance (AILA), Hindu Dharma woman (Wanita Hindu Dharma)	<ul style="list-style-type: none"> ➤ Definition of sexual violence. ➤ Forms of sexual violence. ➤ LGBT issues are affirmed in the Bill on the Elimination of Sexual Violence.
3 Oktober 2018	Working Committee Commission VIII the House of Representatives (DPR RI), and religious forums (MUI, PGI, WALUBI, KUPI)	<ul style="list-style-type: none"> ➤ Simplification of the definition of sexual violence. ➤ Description of forms of sexual violence. ➤ Criminal synchronization with the Criminal Code (KUHP). ➤ Dimensi pencegahan, pemulihan ➤ The content of the principle of personality validity in the Bill. ➤ The content of procedural law is to make it easier for victims to get their rights.
25 Oktober 2018	Working Committee Commission VIII the House of Representatives (DPR RI), and psychologist (DR. Ikhsan Gumilar, DR. Bagus Priyono), and health professional (Dr. Dewi Inong Irana)	<ul style="list-style-type: none"> ➤ Sexual intercourse that can transmit infection. ➤ homosexual acts. ➤ Highlight sexual desire phrases. ➤ Criticism of the Bill on the Elimination of Sexual Violence Article 153 with the definition of a child's age. ➤ Affirmative criticism of pedophilia.
18 Juli 2019	Working Committee Commission VIII the House of Representatives (DPR RI)	<ul style="list-style-type: none"> ➤ Agreement on substance such as title, definition of sexual violence, and types of sexual violence taking into account input from various groups. ➤ Agreement on the Problem Inventory List (DIM) in the shortest possible time

In 2019, the PKS Bill was still being discussed and at the same time the Indonesian Ulama Council (MUI) requested that the PKS Bill be discussed in more detail by taking into account the religious values that exist in Indonesia.³⁶ Meanwhile, several factions of political parties suggested that the PKS Bill be integrated with Pancasila values, not the western paradigm. This condition was further slowed down by the postponement of the PKS Bill until the 2019 general election was completed.³⁷ Even so, in December 2019 the PKS Bill was included in the 2020 Priority Prolegnas. The difficulty in deliberating the PKS Bill and seeking a formulation that was agreed upon by all parties resulted in the PKS Bill being excluded from the 2020 priority Prolegnas by Legislation Committee. This made all the gender activists who fought for the PKS Bill feel very disappointed amidst the increasing cases of sexual violence.

³⁶ Fadiyah Alaidrus, "RUU PKS: Belum Disahkan & Tak Ada Jaminan Dibahas DPR Periode Depan," *Tirto.id*, 2019, <https://tirto.id/ruu-pks-belum-disahkan-tak-ada-jaminan-dibahas-dpr-periode-depan-eibt>.

³⁷ Cakra Wikara Indonesia, "10 Tahun Perjalanan RUU TPKS Menjadi UU TPKS."

In 2020 initiators and actors defending women such as National Commission on Violence against Women (Komnas Perempuan), women activists, and Parliamentary Women's Caucus of Republic of Indonesia (KPP RI) made improvements to the PKS Draft Bill which was then brought to the Legislation Committee to become a draft proposed by the the House of Representatives (DPR RI). The changes to the draft finally bore fruit, the PKS bill returned to Prolegnas which was proposed by the Nasdem (Taufik Basari), PDIP (Diah Pitaloka) and PKB (Luluk Nur Hamidah) factions in March 2021. On the one hand, development was also initiated by the government by forming The Task Force for the Discussion of the TPKS Bill, which is directly coordinated by the President's staff. In its development, the PKS Bill changed its name to the TPKS Bill in September 2021 and was followed by a Working Committee meeting to discuss the TPKS Bill.

Changes to the draft Bill on the Elimination of Sexual Violence into the Draft Bill on Sexual Violence Crime (TPKS) have raised quite serious debates. One of the non-governmental organizations (NGO) that regretted the change in draft and name was the Civil Society Coalition Against Sexual Violence (KOMPAKS). They thought that the name change had a serious impact on the content of the bill as a whole. The new draft of the August 2021 PKS Bill omitted 85 articles containing important provisions that had been proposed by representatives of civil society from victim assistance agencies and women's organizations through academic texts and the draft of the PKS Bill in September 2020.³⁸

Several provisions and principles are missing in the new draft of the PKS Bill from the the House of Representatives (DPR RI) Legislation Committee in August 2021, namely; 1). Loss of guaranteed rights, recovery and protection for victims of sexual violence, 2). Elimination of provisions on rape, forced marriage, forced prostitution, forced abortion, sexual torture, and sexual slavery, 3). Refining the definition of rape to coercion of sexual intercourse, 4). The regulation for online-based sexual violence (KBGO) is empty, and the regulation for dealing with victims of sexual violence with disabilities is empty.³⁹

Table 2 Dynamics of Changes to the Sexual Violence Crimes Bill Draft

Aspek	RUU PKS 2017	RUU PKS 2020	RUU PKS Agustus 2021	RUU PKS Desember 2021
Compositi on of the Act	<ul style="list-style-type: none"> -Chapter I: General provisions. - Chapter II: Principles and goals. - Chapter III: Scope. - Chapter IV: Pencegahan - Chapter V: Sexual violence crime. - Chapter VI: The rights of victims, victims' families and witnesses. 	<ul style="list-style-type: none"> -Chapter I: General provisions. -Chapter II: Principles, goals and scope. -Chapter III: Sexual violence crime. -Chapter IV: The rights of victims, victims' families, witnesses and experts witness. -Chapter V: Prevention. 	<ul style="list-style-type: none"> -Chapter I: General provisions. -Chapter II: Sexual violence crime.- Chapter III: Other criminal acts related to the crime of sexual violence. -Chapter IV: Investigations, prosecution, and examination in court proceedings. -Chapter V: Prevention. 	<ul style="list-style-type: none"> -Chapter I: General provisions. -Chapter II: Sexual violence crime. -Chapter III: Other criminal acts related to the crime of sexual violence. -Chapter IV: Investigations, prosecutions, and examinations in court hearings. -Chapter V: The rights of victims,

³⁸ Koalisi Masyarakat Sipil Anti Kekerasan Seksual, "KOMPAKS Sesalkan Perubahan RUU Penghapusan Kekerasan Seksual Dari BALEG DPR RI ;," 2022, <https://jakartafeminist.com/wp-content/uploads/2021/11/KOMPAKS-Sesalkan-Perubahan-RUU-Penghapusan-Kekerasan-Seksual-dari-BALEG-DPR-RI.pdf>.

³⁹ Koalisi Masyarakat Sipil Anti Kekerasan Seksual.

	<p>-Chapter VII: Handling cases of sexual violence.</p> <p>-Chapter VIII: Society participation.</p> <p>-Chapter IX: Education and training.</p> <p>-Chapter X: Monitoring the elimination of sexual violence.</p> <p>-Chapter XI: Funding.</p> <p>-Chapter XII: International Cooperation.</p> <p>-Chapter XIII: Criminal provisions.</p> <p>_Chapter XIV: Transitional provisions.</p> <p>-Chapter XV: Closing provisions.</p>	<p>-Chapter VI: Investigations, prosecutions, and examinations in court hearings.</p> <p>-Chapter VII: Coordination and supervision.</p> <p>-Chapter VIII: Criminal and punishment.</p> <p>-Chapter IX: Community participation.</p> <p>-Chapter X: Transitional provision.</p> <p>-Chapter XI: Closing provisions.</p>	<p>-Chapter VI: Community participation.</p> <p>-Chapter VII: Coordination.</p> <p>-Chapter VIII: Funding.</p> <p>-Chapter IX: International Cooperation.</p> <p>-Chapter X: Transitional provisions.</p> <p>-Chapter XI: Closing provisions.</p>	<p>families and witnesses.</p> <p>-Chapter VI: UPTD PPAD.</p> <p>-Chapter VII: Prevention, Coordination, and monitoring.</p> <p>-Chapter VIII: Community and family participation.</p> <p>-Chapter IX: Funding.</p> <p>-Chapter X: International Cooperation.</p> <p>-Chapter XI: Transitional provisions.</p> <p>-Chapter XII: Closing provisions.</p>
Type of Crime	<p>a. Sexual harassment.</p> <p>b. Sexual Exploitation.</p> <p>c. Contraceptive Force.</p> <p>d. Abortion Forced.</p> <p>e. Rape.</p> <p>f. Coercion of Marriage.</p> <p>g. Forced prostitution.</p> <p>h. Sexual Slavery.</p> <p>i. Sexual Abuse.</p>	<p>a. Sexual harassment.</p> <p>b. Coercion of Marriage.</p> <p>c. Contraceptive Force.</p> <p>d. Abortion Forced.</p> <p>e. Rape.</p> <p>f. Sexual exploitation.</p> <p>g. Sexual Slavery.</p> <p>h. Sexual Slavery.</p> <p>i. Sexual Abuse.</p>	<p>a. Non-physical sexual harassment.</p> <p>b. physical sexual harassment.</p> <p>c. Contraceptive Force.</p> <p>d. Forced contraception in the form of sterilization.</p> <p>e. Forced sexual intercourse.</p> <p>f. Sexual exploitation.</p> <p>g. Sexual violence committed with:</p> <ul style="list-style-type: none"> - Forced to provide information. - Judging or giving punishment for an act. - Other purposes based on discrimination. 	<p>a. Non-physical sexual harassment.</p> <p>b. physical sexual harassment.</p> <p>c. Electronic based sexual harassment.</p> <p>d. Contraceptive Force.</p> <p>e. Force sterilization.</p> <p>f. Sexual exploitation.</p> <p>g. Sexual violence committed with:</p> <ul style="list-style-type: none"> - Forcing the victim, witness, or a third person to give or not give information. - Judge or give punishment for an act that is alleged to have been committed by him or by another person to humiliate or degrade his dignity - Other purposes based on discrimination.

In December 2021, Legislation Committee has completed the draft of the TPKS Bill, but there are still factions of political parties who are pro and contra to the TPKS Bill, so contestation arises again between political parties. At least of the 9 factions of political parties, there is 1 faction that refuses, namely the PKS faction, 1 faction that wants to delay the ratification, namely Golkar, while the PPP, PDIP, PAN, Gerindra, Demokrat, Nasdem, and PKB factions agree with the TPKS Bill. This has implications for the TPKS Bill not being discussed at the DPR Plenary Meeting to be ratified as a the House of Representatives (DPR RI) initiative.⁴⁰ As a result of contestation between factions, women activists staged demonstrations to urge the TPKS Bill to be passed immediately, given the rampant cases of sexual violence.⁴¹

The pressure that emerged in the public sphere, on January 4, 2022 President Joko Widodo pushed for the acceleration of the ratification of the TPKS Bill, through Deputy V the Chief of Presidential Staff explained the government's commitment to consistently push for the ratification of the TPKS Bill to protect victims of sexual violence. The president asked the Ministry of Law and Human Rights and the Ministry of Justice to carry out consultations with the House of Representatives (DPR RI) in accelerating approval.⁴² The President's statement made the Problem Inventory List (DIM) of sexual violence discussed with the Working Committee (Panja). Then April 5, 2020 the Formulation Team and Synchronization Team examined the harmonization of the substance of the TPKS Bill which finally entered the Plenary Meeting at Legislation Committee by approving the TPKS Bill to become the TPKS Law. On April 12, 2020 Plenary Meeting was held to pass the TPKS Law.

Thus, gender political contestation is described as the impact of the democratization of the post-reform political atmosphere. Despite receiving various criticisms of the TPKS draft law and undergoing changes, women activists continued to show a professional attitude in demanding the ratification of the policy, namely; First, presenting a gender equality paradigm in the TPKS Law. Second, showing advocacy and stakeholder engagement. Third, the synergy between women activists and the community, Parliamentary Women's Caucus of Republic of Indonesia (KPP RI), the Ministry of Women's Empowerment, political parties, executive and legislative council.

Character of the Sexual Violence Crimes: Gender Responsive Law

The influence of political contestation in law also applies to law enforcement, the characteristics of legal products, and the law-making process itself. The statement stated earlier can be seen in the facts regarding women's involvement in the contestation for the ratification of the TPKS Law. According to Mahfud MD, there is relevance between the legal system and the law that is produced. If the legal political configuration is democratic then the legal product that is born is responsive, while an authoritarian political configuration will produce an authoritarian or conservative legal product.⁴³

discussing the legal political configuration of the previous TPKS Law, it can be found that the political configuration of democracy has been present in the reform era. This also shows that the TPKS Law is a responsive policy. Nonet and Selznick argue that responsive

⁴⁰ Cakra Wikara Indonesia, "10 Tahun Perjalanan RUU TPKS Menjadi UU TPKS."

⁴¹ Fathiyah Wardah, "Aktivis Perempuan Dorong Pembahasan & Pengesahan RUU TPKS Segera," VOA Indonesia, 2021, <https://www.voaindonesia.com/a/aktivis-perempuan-dorong-pembahasan-pengesahan-ruu-tpks-segera/6349501.html>.

⁴² Kantor Staf Presiden, "Tindak Lanjut Pernyataan Presiden Tentang RUU TPKS," Kantor Staf Presiden (Jakarta, 2022), <https://www.ksp.go.id/en/tindak-lanjut-pernyataan-presiden-tentang-ruu-tpks.html>.

⁴³ Mahfud, *Politik Hukum Di Indonesia*.

law is a series of criticisms of the reality of legal authority.⁴⁴ Nonet and Selznick also argue that responsive law places law as a means of responding to social provisions and public aspirations.⁴⁵

In this context, law can be said to be gender responsive if in its process it involves elements of society that aim to deliver humans to a life that is just, prosperous, without gender discrimination. So that the TPKS Law is a response of women to their needs, aspirations, and experiences regarding demands to make policies to eliminate sexual violence. As stated by Nonet and Selznick that responsive law is always open and adapts selectively so that the law can respond to changes that occur due to the dynamics of society.⁴⁶

According to Mahfud MD, law is said to be responsive if it meets three criteria, namely its making is participatory, has aspirational content, and the details of its contents are limitative.⁴⁷ These three elements are manifested in the TPKS Law as follows; First, participatory. In the process of realizing the TPKS Law, a very massive participatory approach was carried out by women so that this legal instrument can answer social problems by presenting policies on the prevention, handling and recovery of sexual violence that are just and gender responsive.⁴⁸

The Law on Sexual Violence Crimes in its drafting process which was initiated by women activists invited all elements, both from an individual perspective, community groups, and also from the will of the community. This means that the legal product is not the will of the authorities to merely legitimize their power but rather the will of the people who are advocated by women activists. This is evidenced by the many elements that have participated in advocating for the TPKS Law, from non-governmental organizations (NGO), the general public, political parties, Parliamentary Women's Caucus of Republic of Indonesia (KPP RI), Ministry of Women's Empowerment and Child Protection to the executive branch as described in the previous discussion.

Second, aspirational. The TPKS Law is not a law that was born spontaneously, but is a policy that reflects the aspirations of society, especially among women who are vulnerable to becoming victims of sexual violence. The need to present a legal umbrella for the elimination of sexual violence is caused by the high number of cases of sexual violence. During 2011 to 2019 there were 46,698 complaints of sexual violence that occurred in the domestic or public sphere. Not only that, there are various forms of sexual violence, including rape, intercourse, sexual slavery, forced abortion, marital rape, sexual exploitation, and others.⁴⁹

Women activists are aware that sexual violence occurs repeatedly and continuously. The facts show that the impact of sexual violence is very serious and makes the victim very

⁴⁴ Responsive Law was developed by Philip Nonet and Selznick, specifically discussing variables related to law. Responsiveness is translated as serving social needs and interests. The characteristics of responsive law are: a. shifts in emphasis from rules to principles and goals; b. the importance of populist character (populist) both as a legal goal and a way to achieve it. Nonet and Selznick place law as a social response and public aspirations. In fact, according to Nonet and Selznick, responsive law is a program of sociological jurisprudence and realist jurisprudence.

⁴⁵ Sulaiman, "Responsive Law: Law as a Social Institutions to Service of Social Need in Transition," *Jurnal Hukum Samudera Keadilan* 9, no. 2 (2014): 199–205.

⁴⁶ Philippe Nonet and Philip Selznick, *Law and Society in Transition*, ed. Raisul Muttaqin (Bandung: Nusa Media, 2015).

⁴⁷ Mahfud, *Politik Hukum Di Indonesia*.

⁴⁸ Fairiza Dwi Hantari, "Politik Hukum Rancangan Undang-Undang Tindak Pidana Kekerasan Seksual Dalam Menjamin Kepastian Hukum Masyarakat Perspektif Hak Asasi Manusia," *Repository UIN Prof. KH. Saifuddin Zuhri Purwokerto* (UIN Saifuddin Zuhri, 2022).

⁴⁹ Jaringan Masyarakat Sipil and Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Naskah Akademik Dan Naskah Rancangan Undang-Undang Tentang Penghapusan Kekerasan Seksual," *Institute For Criminal Justice Justice Reform*, 2020, <https://icjr.or.id/wp-content/uploads/2021/09/RUU-PKS-2020-JMS-icjr-upload.pdf>.

traumatic. The National Commission on Violence against Women (Komnas Perempuan) notes that victims of sexual violence have not received justice, protection and recovery from the state. On this basis, an initiative emerged to demand the presence of a policy capable of responding to this problem.

Aspirations to eradicate sexual violence did not only come from, women's activists and civil society, but political party factions in parliament also assisted in the process of ratifying the TPKS Law and government agencies such as Kemenppa. As the author has stated in the previous discussion, that the majority of political party factions fully support and one of the other factions rejects, namely the PKS Party. Thus in a comprehensive manner, the TPKS Law has an important meaning for strengthening regulations regarding the treatment and responsibility of the state to prevent, handle cases of sexual violence and recovery of victims.⁵⁰ So that the emergence of the TPKS Law is a product of the aspirations of all elements of society in Indonesia.

Third, limited. This means that the contents of the legal product have a very detailed meaning so that it limits the government's unilateral interpretation.⁵¹ The involvement of women activists in providing limitations to the TPKS Law made the policy provide a typology of forms of sexual violence that had never been regulated and clearly stated before. At least the TPKS Law has criminalized nine forms of sexual violence, namely: (1) non-physical sexual harassment; (2) physical sexual harassment; (3) forced contraception; (4) forced sterilization; (5) forced marriage; (6) sexual torture; (7) sexual exploitation; (8) sexual slavery; and (9) electronic-based sexual violence. Not only that, women also included provisions on criminal acts and efforts to handle cases of sexual violence in a more comprehensive manner.

Tabel 5. Poin penting UU TPKS:

No	Article	Content
Every act of sexual harassment is included in sexual violence		
1.	Article 4 section (1)	Mentioning any person who performs non-physical actions in the form of gestures, writing, and/or words to other people related to a person's body parts and related to sexual desires, is punished for non-physical sexual harassment. The maximum penalty for the perpetrators is 9 (nine) months imprisonment and/or a maximum fine of Rp. 10,000,000 (ten million rupiah).
Forms of sexual violence		
2.	Article 4 section (1)	It stated that there were nine acts of sexual violence under Sexual Violence Crime Law, namely non-physical sexual harassment, physical sexual harassment, forced contraception and forced sterilization. In addition, there are forced marriages, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. For electronic-based sexual violence, this includes revenge porn or the distribution of pornographic content.
Forcing sexual intercourse is subject to criminal fines		
3.	Article 6	It stated that anyone who commits an act of forcing others to use contraceptives by force or threats of violence can be punished for coercion of sterilization.

⁵⁰ Akhidatus Sholihah, "Analisis Kekerasan Seksual Terhadap Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual (UU TPKS) Dalam Perspektif Hukum Islam" 6, no. November (2022): 44-70.

⁵¹ Despan Heryansyah, "Politik Hukum Konfigurasi Politik," Kompas.id, 2023, <https://www.kompas.id/baca/opini/2020/11/19/konfigurasi-politik>.

Actors are not only subject to punishment and fines		
4.	Article 16	It states that in addition to imprisonment, fines, or other punishments according to the provisions of the law, judges can impose penalties in the form of revocation of child custody, announcement of actor's identity and/or confiscation of profits and/or assets obtained from the Sexual Violence Crime.

The criminalization of the nine forms of TPKS is a new breakthrough to fill the void in criminal law to tackle the problem of sexual violence. This regulation is a compass for the State of Indonesia in taking steps to deal with TPKS, starting from prevention, handling, to recovery of TPKS victims. In addition, the presence of the TPKS Law complements and perfects various similar arrangements that have previously been partially regulated and scattered in several laws and regulations.⁵²

CLOSING

Based on the discussion above, we argue that women have a significant role in the flow of legal political contestation of the TPKS Law. Women and activists who support the TPKS Law initiate and advocate for the creation of gender-oriented laws. Women's involvement in the contestation flow of deliberations on the TPKS Law experienced various kinds of obstacles caused by adjustments and harmonization between groups that supported or opposed it. This is evidenced by the dynamics of changes to the TPKS Draft Bill, both in terms of the composition of the law and the types of sexual violence crimes that are not criminalized. Despite receiving various criticisms of the TPKS Law draft and undergoing changes, women and those who are pro TPKS Law continue to show a professional attitude in demanding the ratification of the policy, namely; First, presenting a gender equality paradigm in the TPKS Law. Second, showing advocacy and stakeholder engagement. Third, the synergy between women activists and the community, Parliamentary Women's Caucus of Republic of Indonesia (KPP RI), the Ministry of Women's Empowerment, political parties, executive and legislative institutions.

The involvement of women in producing the TPKS Law indicates that women play an active role in developing national laws that are gender responsive. We conclude that the TPKS Law is a response among women to their needs, aspirations, and experiences regarding demands to make policies to eliminate sexual violence. This is done to overcome the rigidity and insensitivity of the law towards social problems, especially victims of sexual violence, which are dominated by women. The TPKS Law as a responsive law can be seen from three indicators namely; First, participative, namely in this context women are the initiators of the formation of the TPKS Law which is then supported by non-governmental organizations (NGO), government agencies, the general public, and political parties, to the executive branch. Second, aspirational, namely policies that reflect the aspirations of society, especially among women who are vulnerable to becoming victims of sexual violence. Third, limitative, namely the involvement of pro-women groups in providing limitations to the TPKS Law makes this policy provide a typology of forms of sexual violence and also criminalization for perpetrators with criminal charges or fines.

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