

Shifting Paradigms of Sexual Violence Victims within the Integrated Criminal Justice System in Indonesia

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ABSTRACT

This article examines the transformation of victim protection in Indonesia's integrated criminal justice system following the enactment of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS). It asks whether the statutory shift toward a victim-centered approach has been translated into adjudicative practice, particularly in relation to restitution and psychological rehabilitation. The study applies normative or doctrinal legal research. It combines statutory, historical, conceptual, and case approaches, with particular attention to Denpasar District Court Decision No. 77/Pid.Sus/2026/PN Dps. Primary legal materials include Law No. 12 of 2022, Law No. 31 of 2014 on Witness and Victim Protection, Law No. 1 of 2023 on the Criminal Code, and Supreme Court Regulation No. 3 of 2017. The analysis is guided by Lawrence M. Friedman's legal system theory and Nonet and Selznick's responsive law theory. The article finds a significant gap between progressive statutory substance and courtroom implementation. Although the UU TPKS recognizes victims' rights to care, protection, recovery, restitution, and rehabilitation, judicial practice remains substantially offender-oriented. In the case studied, the decision successfully imposed criminal punishment but did not integrate restitution or victim recovery into the operative part of the judgment. The problem is not merely doctrinal but systemic: legal substance has advanced faster than legal structure and legal culture. The article contributes to Indonesian criminal justice scholarship by identifying a procedural vacuum in the enforcement of victim recovery rights. It argues for mandatory restitution calculation, judicial authority to address recovery ex officio, and institutional synchronization among investigators, prosecutors, judges, LPSK, social services, and victim assistance providers.

Keywords:

sexual violence;
victim-centered
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integrated
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INTRODUCTION

Sexual violence remains one of the most serious human rights and criminal justice problems in Indonesia. Data reported in the national protection system for women and children indicate that the number of adult female victims of sexual violence rose from 2,062 in 2022 to 2,184 in 2023 and reached 2,612 in 2024 (Kemen PPPA, 2022, 2025). The same pattern is visible in cases involving children, with recorded child victims increasing from 9,588 in 2022 to 10,932 in 2023 and 11,771 in 2024 (Kemen PPPA, 2025). These figures must be interpreted carefully because reported cases do not represent prevalence; underreporting remains likely where victims face stigma, dependence on perpetrators, or weak access to services. Nevertheless, the upward trend signals that legal reform must be accompanied by operational reform in prevention, reporting, evidence handling, victim protection, and recovery.

The enactment of Law No. 12 of 2022 on Sexual Violence Crimes, commonly referred to as the UU TPKS, marked a major departure from Indonesia's earlier legal treatment of sexual violence. For decades, sexual violence was largely regulated through the colonial-inherited Criminal Code and was commonly framed as an offence against public morality rather than as a violation of bodily integrity, autonomy, dignity, and substantive equality. The UU TPKS reshapes this orientation by defining sexual

violence more comprehensively and by recognizing victims' rights to care, protection, and recovery from the occurrence of the offence (Government of Indonesia, 2022; ICJ, 2023).

The reform is normatively important, but the central issue is implementation. A progressive statute does not automatically transform courtroom practice. Victims may still be treated as evidentiary instruments whose testimony is used to prove the defendant's guilt while their own recovery is left outside the operative scope of the judgment. Such a pattern reproduces secondary victimization, a phenomenon in which the legal, medical, or social response to sexual violence intensifies the victim's trauma rather than reducing it (Campbell & Raja, 1999; Rahmi, 2019).

This problem is particularly acute in sexual violence cases involving children. Children are socially, physically, and psychologically vulnerable; sexual trauma can disrupt emotional regulation, trust formation, educational participation, and family relationships (Batian, 2024; Yussyanti, 2020). When the perpetrator is a family member, the victim's vulnerability is intensified by dependency, intimidation, economic pressure, and the family's fear of social stigma (Maulida & Romdoni, 2024; Zul Khaidir Kadir, 2025).

The article therefore focuses on a specific legal problem: the gap between victim rights recognized in substantive law and the procedural mechanisms required to make those rights enforceable in court. The current framework recognizes restitution, compensation, protection, and recovery. However, where the public prosecutor or the Witness and Victim Protection Agency (LPSK) does not calculate or request restitution, judges often remain passive because no explicit procedural rule obliges them to decide recovery *ex officio*. The problem is sometimes described as judges being unable to decide beyond the prosecutor's demand. More precisely, it concerns the limits of adjudication under the indictment and claim framework in criminal procedure; it should not be described as *pacta sunt servanda*, which is a contract-law principle.

Using Decision No. 77/Pid.Sus/2026/PN Dps of the Denpasar District Court as a case study, this article asks three research questions. First, how has Indonesian sexual violence legislation shifted from a morality-based paradigm to a victim-centered paradigm? Second, how does the selected decision illustrate the implementation gap between statutory rights and judicial remedies? Third, what procedural and institutional reconstruction is necessary to ensure that victims' rights to restitution and rehabilitation are not merely declaratory?

The article's contribution is twofold. Conceptually, it links the victim-centered approach in the UU TPKS with legal system theory and responsive law theory. Practically, it identifies the procedural vacuum that prevents recovery rights from being routinely incorporated into judgments, and it proposes concrete reforms for prosecutors, judges, LPSK, social services, and court administration.

Literature Review and Theoretical Framework

1. Victim-centered justice and secondary victimization

A victim-centered approach places the victim's dignity, safety, participation, and recovery at the center of criminal justice. It does not negate the defendant's due process rights; rather, it requires the system to recognize that the victim is a legal subject with independent rights, not only a witness for the state. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

states that victims should be treated with compassion and respect for their dignity, should have access to justice, and should receive prompt redress (United Nations General Assembly, 1985).

In sexual violence cases, victim-centered justice is closely related to the prevention of secondary victimization. Sexual violence often occurs in private, is accompanied by intimidation, and leaves psychological injuries that are not always visible. Rigid evidentiary expectations, hostile questioning, victim-blaming narratives, or inquiries into a victim's sexual history may reproduce trauma and discourage reporting (Campbell & Raja, 1999; Saraswati, 2020). The victim-centered approach therefore requires evidentiary flexibility, trauma-informed examination, access to support persons, protection from intimidation, and an enforceable route to restitution and rehabilitation.

Indonesian scholarship has increasingly emphasized these issues. Rahmi (2018, 2019) argues that restitution and compensation must be treated as integral aspects of protection in a gender-just criminal justice system. Purwanti and Hardiyanti (2018) show that the older legal framework left unresolved gaps in the handling of sexual violence against women and children. More recent scholarship after the UU TPKS highlights the statute's progressive features but also warns that implementation depends on the capacity and sensitivity of law enforcement institutions (Apriyadi & Hiola, 2025; Hairi & Latifah, 2023; Nova, 2025).

2. Legal system theory

Lawrence M. Friedman's legal system theory provides a useful diagnostic framework for evaluating why a progressive statute can fail in practice. Friedman (1975) conceptualizes a legal system through the interaction of legal substance, legal structure, and legal culture. Legal substance refers to the normative content of rules. Legal structure refers to institutions and actors that apply those rules, including police, prosecutors, judges, social services, and protection agencies. Legal culture refers to the values, assumptions, expectations, and social practices that shape legal behavior.

Applied to sexual violence adjudication, the UU TPKS demonstrates strong progress at the level of legal substance. However, substantive reform may fail if prosecutors do not calculate restitution, judges do not integrate recovery into the judgment, LPSK is not involved at the right procedural stage, and families or communities pressure victims into silence. The legal system is therefore only as effective as the interaction of its components (Kautsar & Muhammad, 2022; Mariyanawati & Saleh, 2023).

3. Responsive law

Nonet and Selznick's responsive law theory also assists the analysis. Responsive law rejects the idea that law should be applied in a purely formalistic manner detached from social consequences. It emphasizes substantive justice, institutional accountability, and the capacity of legal actors to interpret rules in light of their social purpose (Nonet & Selznick, 1978). In the context of sexual violence, responsive law requires courts to ask not only whether the defendant should be punished, but also whether the victim's legally recognized rights are made effective.

The UU TPKS is best understood as a responsive legal instrument. It was enacted to overcome the inadequacy of older legal categories, rigid evidentiary standards, and the social practice of blaming victims. Its explanatory materials emphasize prevention, handling, recovery, coordination among government levels,

and the creation of an environment free from sexual violence (Government of Indonesia, 2022). However, the statute's responsiveness is incomplete if court decisions continue to reduce the case to punishment alone.

Existing studies generally agree that the UU TPKS represents a progressive statutory reform (Hairi & Latifah, 2023; Mahendra & Siregar, 2024; Nova, 2025). Other works examine the psychosocial burden of victims, the stigma surrounding reporting, and the need for rehabilitation (Batian, 2024; Nur & Ihsanti, 2025; Zul Khaidir Kadir, 2025). This article builds on those works but narrows the analysis to a specific procedural question: what happens when restitution and rehabilitation are recognized as substantive rights but are not operationalized in the final judgment? This focus allows the article to identify a more precise normative gap and to formulate reforms that can be implemented by judicial and prosecutorial institutions.

METHOD

This study uses normative or doctrinal legal research. Normative legal research examines legal norms, principles, doctrines, statutory coherence, and court decisions through the analysis of legal materials rather than primary sociological fieldwork (Audina Sukmawan & Damayanti, 2025; Wibowo, 2025; Wiwik & Widiarty, 2024). The method is appropriate because the central issue is a normative and procedural gap: the relationship between statutory victim rights and the court's authority or obligation to enforce those rights.

Four approaches are used. First, the statutory approach examines Law No. 12 of 2022, Law No. 31 of 2014, Law No. 1 of 2023, and Supreme Court Regulation No. 3 of 2017. Second, the historical approach traces the shift from colonial morality-based regulation to contemporary human rights-based regulation. Third, the conceptual approach applies victim-centered justice, legal system theory, and responsive law theory. Fourth, the case approach analyzes Denpasar District Court Decision No. 77/Pid.Sus/2026/PN Dps as a concrete illustration of the implementation gap.

Primary legal materials consist of statutes, court rules, and the selected court decision. Secondary legal materials include books, journal articles, institutional reports, and policy documents on sexual violence, victim protection, restitution, procedural law, and judicial gender sensitivity. The materials are analyzed using descriptive, systematic, argumentative, and evaluative techniques. The descriptive technique identifies the content of legal norms. The systematic technique examines coherence among legal instruments. The argumentative technique assesses whether the court's reasoning fulfills the purpose of victim protection. The evaluative technique measures the gap between the normative ideal and the practical outcome.

The article does not claim to present a statistical national map of judicial behavior. Its case approach provides analytical depth rather than numerical generalization. The selected decision is used as a diagnostic case to reveal how a progressive statute may fail to produce comprehensive remedies when procedural pathways are incomplete. Future research should extend this analysis through a larger content analysis of sexual violence judgments across jurisdictions.

RESULTS AND DISCUSSION

1. From morality-based offences to human dignity-based sexual violence law

The legal treatment of sexual violence in Indonesia has undergone a paradigmatic transformation. Under the colonial-inherited framework, sexual violence was primarily conceptualized through morality and decency provisions. This perspective placed the emphasis on public order and sexual propriety rather than on the victim's autonomy, bodily integrity, and psychological recovery. It also generated evidentiary expectations that were frequently unrealistic for sexual violence cases, which often occur in private spaces without eyewitnesses (Haniyah et al., 2025; Setyadi & Utari, 2025).

The historical turning point occurred after the 1998 Reformasi period. The mass sexual violence experienced by ethnic Chinese women during the 1998 riots revealed the inability of the existing legal system to recognize gender-based violence as a human rights issue. That national trauma contributed to the formation of Komnas Perempuan and helped transform the legal discourse from morality to dignity and rights (Munthe & Rachmawati, 2025; Purwanti & Hardiyanti, 2018).

The UU TPKS represents the culmination of this shift. Article 2 is grounded in respect for human dignity and honor, non-discrimination, the best interests of the victim, justice, benefit, and legal certainty. Article 3 states that the law aims to prevent all forms of sexual violence, provide care, protection, and recovery to victims, facilitate law enforcement and offender rehabilitation, create an environment free from sexual violence, and ensure non-repetition (Government of Indonesia, 2022). This statutory language marks a decisive move from a morality-based paradigm to a dignity-based and recovery-oriented paradigm.

2. Evidentiary reform and the expansion of victim rights

One of the most important reforms in the UU TPKS concerns evidence. Earlier practice often required victims to meet rigid evidentiary thresholds, including physical traces or eyewitnesses, even though sexual violence is commonly committed in secrecy. Article 25 of the UU TPKS provides a more realistic evidentiary framework by recognizing the legal significance of victim testimony when supported by other valid evidence. This reform is consistent with the need to reduce procedural barriers that have historically prevented victims from obtaining justice (Nova, 2025; Setyadi & Utari, 2025).

The statute also recognizes a broad catalogue of victim rights. Victims have rights to care, protection, and recovery, and these rights are framed as a state obligation. The ICJ's analysis of Law No. 12 of 2022 emphasizes that victims should have access to remedies including restitution, rehabilitation, satisfaction, guarantees of non-repetition, and, where relevant, the removal of harmful electronic content (ICJ, 2023). Article 31 also requires law enforcement officers, prosecutors, and judges to inform victims about restitution. Thus, the formal legal substance is not the main weakness; the central challenge lies in operationalization.

Supreme Court Regulation No. 3 of 2017 strengthens this normative framework by requiring judges to apply principles of human dignity, non-discrimination, gender equality, equality before the law, justice, benefit, and legal certainty when adjudicating cases involving women before the law. It also instructs judges to avoid statements that belittle, blame, or intimidate women and to consider power relations, psychological

impacts, and the victim's vulnerability (Supreme Court of the Republic of Indonesia, 2017; Saraswati, 2020). These provisions are highly relevant to sexual violence cases, even where the victim is a child, because the same problem of unequal power relations and gender-based stereotypes is present.

3. Case analysis: Decision No. 77/Pid.Sus/2026/PN Dps

Decision No. 77/Pid.Sus/2026/PN Dps concerns repeated sexual abuse of a child by her stepfather. The offence took place within a domestic relationship marked by asymmetrical power. The perpetrator exploited the vulnerability of the child and the circumstances of the household, particularly when the victim's biological mother was hospitalized. The child initially concealed the abuse because of intimidation and psychological pressure. The mother eventually reported the matter after observing behavioral changes and receiving the child's disclosure.

The evidentiary process showed the importance of scientific and expert evidence. Psychological testimony indicated deep trauma and verbal inhibition. The victim reportedly reenacted parts of the experience through body gestures, reflecting the difficulty of verbalizing sexual trauma. A visum et repertum provided forensic support by identifying an old rupture in the hymen consistent with blunt-force penetration. Social services intervened by moving the victim and her mother to a safe house.

The case also illustrates how legal culture and family dependency can disrupt protection. The safe-house intervention faced resistance from the family. The mother reportedly attempted to withdraw the police report because of economic dependence on the perpetrator. This fact confirms that sexual violence cases cannot be understood only as individual criminal events; they are embedded in family hierarchies, economic vulnerability, stigma, and fear of social judgment (Maulida & Romdoni, 2024; Zul Khaidir Kadir, 2025).

The positive aspect of the case is that law enforcement officers refused to terminate the case through restorative justice. This is consistent with the UU TPKS principle that sexual violence cases generally should not be resolved outside the judicial process, except in specific circumstances involving child offenders. The court imposed a severe prison sentence, thereby recognizing the gravity of the offence.

However, the decision's weakness lies in its remedial incompleteness. The operative part of the judgment focused on punishment but did not clearly mandate restitution for the victim's psychological recovery or integrate rehabilitation into the judgment. The outcome therefore shows a persistent offender-oriented orientation. The criminal process succeeded in punishing the perpetrator but did not fully realize the victim-centered paradigm promised by the UU TPKS.

4. Legal system diagnosis: substance, structure, and culture

The implementation gap can be understood through Friedman's three components of the legal system. At the level of legal substance, Indonesia has made substantial progress. The UU TPKS expands the definition of sexual violence, reforms evidentiary rules, and recognizes victim rights to care, protection, recovery, restitution, and rehabilitation. Law No. 31 of 2014 provides a broader witness and victim protection framework, while Supreme Court Regulation No. 3 of 2017 introduces gender-sensitive adjudication standards.

The structural component, however, remains inconsistent. Investigators, prosecutors, judges, LPSK, social workers, psychologists, and local protection

agencies must function as an integrated chain. If one link fails to initiate restitution assessment or rehabilitation planning, the court may deliver a punitive judgment without a recovery order. In the case studied, the structural chain did not adequately transform the victim's trauma and economic vulnerability into concrete judicial remedies.

The legal culture component is equally decisive. Families may suppress cases because of economic dependence on the perpetrator. Communities may blame victims or prioritize family reputation over recovery. Court actors may still assume that their task is complete once imprisonment is imposed. These cultural assumptions weaken the victim-centered approach and show why legal reform must be accompanied by social and institutional transformation.

5. Mapping the implementation gap

Table 1. Legal system analysis of contemporary sexual violence victim protection in Indonesia

Legal system element	Normative position	Implementation finding	Implication
Legal substance	Law No. 12/2022, Law No. 31/2014, Law No. 1/2023, and Supreme Court Regulation No. 3/2017 recognize care, protection, recovery, restitution, rehabilitation, non-discrimination, and gender-sensitive adjudication.	The normative framework is progressive and reflects a victim-centered approach.	The weakness does not primarily lie in the absence of substantive rights, but in the procedural mechanism for enforcing those rights.
Legal structure	Police, prosecutors, judges, LPSK, social services, psychologists, and victim-service providers are expected to work as an integrated protection chain.	Courtroom practice remains substantially offender-oriented when judgments focus on imprisonment without restitution or rehabilitation orders.	Structural synchronization is required from investigation to post-judgment enforcement.
Legal culture	The UU TPKS seeks to build a culture that rejects sexual violence, victim blaming, and discriminatory treatment.	Family economic dependence, stigma, fear of shame, and patriarchal norms may suppress reporting and disrupt protection.	Community education and material support for victims are essential to make legal rights usable.

Table 2. Procedural points requiring reconstruction

Procedural stage	Current vulnerability	Recommended reconstruction
Investigation	Victim protection may focus on testimony collection rather than recovery assessment.	Require early referral to LPSK/social services and initial documentation of physical, psychological, educational, and economic losses.
Prosecution	Restitution may be omitted if the prosecutor does not calculate or request it.	Make restitution assessment a mandatory component of the sentencing claim in sexual violence cases.
Trial	Judges may remain passive if restitution is not requested.	Clarify judicial authority and obligation to consider restitution and rehabilitation ex officio, with procedural fairness for the defendant.

Judgment	The operative part may focus only on imprisonment.	Require a specific section on victim rights, recovery measures, restitution, compensation, and referral for rehabilitation.
Post-judgment	Recovery orders may be difficult to enforce or monitor.	Establish monitoring between courts, prosecutors, LPSK, and social services until the recovery order is implemented.

6. The procedural vacuum concerning restitution and rehabilitation

The central normative problem identified by this article is not the absence of victim rights in substantive law. The problem is the absence of an automatic procedural mechanism ensuring that those rights are addressed in every relevant judgment. The UU TPKS recognizes restitution and rehabilitation, but judicial practice still depends heavily on whether prosecutors or LPSK calculate and request restitution. If that does not occur, judges may refrain from deciding restitution because they do not have an explicit procedural obligation or clearly articulated ex officio authority to do so.

This procedural vacuum produces three effects. First, restitution becomes contingent rather than routine. Second, rehabilitation becomes a post-judgment administrative matter rather than an integral part of justice. Third, the burden of activating rights shifts back to victims, who may be children, traumatized, economically dependent, or unaware of their legal entitlements. This contradicts the statutory promise that the fulfillment of victim rights is a state obligation.

A responsive interpretation of the UU TPKS requires legal actors to treat restitution and rehabilitation as inseparable from adjudication. Prosecutors should include a restitution assessment in the indictment or sentencing claim. LPSK and social services should provide expert calculation of psychological, medical, educational, and social recovery needs. Judges should be expressly authorized, and in appropriate cases obliged, to consider recovery even when the prosecutor's demand is incomplete. Such a mechanism would not violate due process if the defendant is given an opportunity to respond to the restitution calculation.

7. Institutional and policy implications

The findings imply that Indonesia's integrated criminal justice system requires procedural synchronization. The Supreme Court and the Attorney General's Office should issue technical guidelines requiring the identification of victim recovery needs from the investigation stage through sentencing. These guidelines should specify who calculates restitution, what costs may be included, how expert psychological reports are used, how the defendant may challenge the calculation, and how enforcement is monitored after judgment.

Judicial training must also be strengthened. Gender-sensitivity training should not be treated as a symbolic program. It should be linked to concrete competencies: identifying power relations, avoiding victim-blaming questions, understanding trauma responses, using remote testimony where needed, incorporating support persons, and writing judgments that address both punishment and recovery. Supreme Court Regulation No. 3 of 2017 provides a foundation for this training, but its integration into sexual violence adjudication must be evaluated more rigorously.

Finally, community-based prevention and recovery mechanisms are needed to address legal culture. Families and communities must understand that withdrawing a report because of economic dependence or stigma can perpetuate violence and silence victims. The state should ensure that safe houses, psychosocial assistance, temporary financial assistance, and legal aid are accessible outside major cities.

Without these support systems, victim-centered justice will remain a formal promise rather than a lived reality.

CONCLUSION

Indonesian sexual violence law has shifted significantly from a morality-based paradigm to a victim-centered, human dignity-based paradigm. The UU TPKS recognizes victims as legal subjects entitled to care, protection, recovery, restitution, and rehabilitation. It also reforms evidentiary rules and aligns Indonesian law more closely with international victim-rights standards. Normatively, the legal substance is progressive.

However, the analysis of Decision No. 77/Pid.Sus/2026/PN Dps shows that judicial implementation remains incomplete. The court succeeded in punishing the perpetrator, but the judgment did not fully integrate restitution or psychological rehabilitation for the child victim. The case therefore illustrates the gap between law in books and law in action. Through Friedman's framework, the gap results from the uneven interaction of legal substance, legal structure, and legal culture. Through responsive law theory, the case shows that formal punishment is insufficient when it does not produce substantive recovery.

The main reform required is a procedural bridge. Victim recovery rights should not depend solely on the initiative of the victim or on the discretionary activeness of one institution. Restitution calculation, rehabilitation planning, and judicial consideration of recovery must become mandatory elements of sexual violence case handling. Only then can the UU TPKS achieve its core purpose: protecting victims' dignity and ensuring that criminal justice provides not only punishment, but also meaningful recovery.

Recommendations

First, the Supreme Court should issue or revise procedural guidance authorizing judges to address restitution and rehabilitation ex officio in sexual violence cases, provided that the defendant's right to respond is guaranteed. Second, the Attorney General's Office should require prosecutors to include detailed restitution calculations in sentencing demands. Third, LPSK should be integrated earlier into the criminal process so that victim losses and recovery needs are assessed before trial. Fourth, social services and local protection units should ensure continuity of safe-house placement, psychosocial support, educational reintegration, and economic assistance for families vulnerable to pressure from perpetrators. Fifth, mandatory gender-sensitive and trauma-informed judicial training should be institutionalized for investigators, prosecutors, judges, court staff, and victim-service providers.

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