
Law on Sexual Violence Crime (TPKS): Abolishing Restorative Justice and Prioritising Victims' Rights

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Abstract

In Indonesia, the resolution of sexual violence cases often involves out-of-court mechanisms or restorative justice settlements. Following the enactment of the Law on Sexual Violence Crime (hereinafter abbreviated as TPKS), there should be no further out-of-court law settlements as explicitly regulated in Article 23. This paper seeks to criticise the prevailing practice of restorative justice. In addition, this article discusses the TPKS Law as a legal framework that favours the rights of victims using a feminist standpoint approach. The research method in this study is descriptive qualitative, using various sources of literature as its data sources. The results show that the implementation of restorative justice has ignored the aspects of unequal power relations between victims and perpetrators, which resulted in re-victimisation and the neglect of victims' rights. The TPKS Law is a starting point for the abolition of restorative justice practices in resolving sexual violence cases. The TPKS Law guarantees more protection for victims' rights, making victims more empowered and avoiding intimidating treatment from law enforcement officials and perpetrators. However, the TPKS Law has not been integrated with regulations in law enforcement institutions. Thus, guidelines for handling sexual violence based on the TPKS Law are essential for law enforcement institutions, ensuring a more gender-sensitive approach while permanently halting the practice of restorative justice in such cases.

Keywords: Sexual violence; Restorative justice; Law on Sexual Violence Crime (UU TPKS), Victims rights, Victim centered approach.

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Introduction

The issue of sexual violence remains an enduring spectre, disproportionately affecting vulnerable groups, particularly women. Based on the National Commission for Women's (Komisi Nasional Anti Kekerasan Terhadap Perempuan 2023) Annual Record (CATAHU) in 2023, the number of complaints of violence cases reached 457,895. Of the total complaints, 339,782 were categorised as gender-based violence (GBV), of which 3442 were reported to Komnas Perempuan. Meanwhile, based on the latest data from the Online Information System for the Protection of Women and Children (Simfoni PPA) from January to November 2023, there were 15,120 cases of violence against children, with 12,158 female victims and 4,691 male victims. Of these cases, sexual violence ranked first.

Various cases of sexual violence continue to escalate in complexity, making them increasingly difficult to resolve. This is related to legal reform in Indonesia, where restorative justice mechanisms are included in the regulations of law enforcement agencies, including the police force. The law on the implementation of restorative justice is stated in the Regulation of the Indonesian National Police No. 8 of 2021 on Criminal Procedures Based on Restorative Justice. The most notable problem within the regulation lies in Article 5, which excludes sexual violence crimes from reconciliation (INFID 2022). This provision, however, indirectly creates opportunities for applying restorative justice in addressing sexual violence cases. Consequently, many instances of sexual violence have been resolved using this approach.

According to the Prosecutor's Regulation on the Termination of Prosecution Based on Restorative Justice Number 15 of 2020 Article 1 Paragraph 1, restorative justice is a settlement of a criminal case by involving perpetrators, victims, families of perpetrators/victims, and other related parties to collectively seek a fair settlement by emphasising recovery to the former states without retribution. Restorative justice is considered to be a form of "out of court" crime settlement with certain conditions and considerations and based on an agreement between the victim and the perpetrator.

As a non-court problem-solving mechanism, restorative justice contradicts the newly enacted TPKS Law regarding the settlement of sexual violence cases. The Article 23 of the

TPKS Law explicitly states that sexual violence cases “cannot be resolved outside the judicial process, unless the perpetrator is a child” which will be addressed specifically by the Child Criminal Justice System Law No. 11/2012.

The TPKS Law, on the one hand, adopts restorative justice principles, though not in terms of case settlement, but rather in terms of guaranteeing victims' rights to remedies such as reparations and restitutions (Azizah 2023). However, restorative justice should not be applied to solve sexual violence cases because it contradicts Article 23 of the TPKS Law and obstructs its implementation. In addition, applying restorative justice in the settlement of sexual violence cases weakens the victim's condition because it is often misinterpreted and misused by law enforcement officials to dismiss cases. This interpretation faces strong resistance, particularly as the resolution of sexual violence cases often concludes with amicable settlements or is coerced into such outcomes. Such settlements are typically resolved through the payment of a certain amount of money to the victim and even by marrying the victim. This case happened to a rape victim at Kemenkop UKM on December 6, 2019. The Bogor Police, who were handling the case, facilitated the reconciliation between the four perpetrators and the victim, which ended with the victim marrying one of the perpetrators. Afterwards, a Letter of Termination of Investigation (SP3) was issued on March 18, 2020, on the pretext of restorative justice (Dhewy 2023). This approach to settlement has caused restorative justice to overlook or disregard the experiences and rights of sexual violence victims, leaving them even more vulnerable and powerless.

Based on the description above, this article seeks to examine the abolition of restorative justice mechanisms in the case of sexual violence in Indonesia following the enactment of the TPKS Law. In numerous instances, restorative justice has demonstrated its inability to protect the rights of women as victims of sexual violence, particularly in ensuring justice and facilitating recovery. Additionally, this article will explore the application of the TPKS Law and its impact on victims of sexual violence, analysing how it addresses their rights and the challenges it presents in providing justice and support for recovery. This analysis builds on relevant sources, specifically on the regulation of the TPKS Law, the concept and practice of restorative justice in general, the legal instruments involved and several examples of actual cases. This article focuses on the position of victim-survivors of

sexual violence, using their experiences as the key narrative to critique the practice of prevailing restorative justice. It also aims to affirm the TPKS Law as a step forward in advocating for the rights and protection of victims. To frame the issue, this article uses a feminist standpoint approach in an attempt to prioritise the position of victim-survivors of sexual violence cases.

Methods

This article employs a literature study method, utilising a descriptive qualitative approach to analyse existing research, legal frameworks, and case studies related to sexual violence, restorative justice, and the TPKS Law. This method is used in the critical analysis related to the implementation of restorative justice in Indonesia. In exploring the application of restorative justice in cases of sexual violence, this article examines the legal frameworks and the role of law enforcement institutions as key entry points for the implementation of both restorative justice and the TPKS Law. The TPKS Law serves as the primary focus, particularly concerning the settlement of sexual violence cases. In addition, criticisms of the implementation of restorative justice are also analysed by placing the position of victim-survivors as the perspective in analysing the implementation of restorative justice in sexual violence cases. To review the narratives and experiences of victim-survivors, we use a feminist standpoint approach.

Standpoint feminism is used to focus attention on the emerging narratives of vulnerable groups or parties and further uncover the power relations in sexual violence cases. In the context of victim-survivors of sexual violence, standpoint feminism perceives women as agents of knowledge. Women's experiences become the main source for social analysis, and only women should be able to reveal what has happened according to their experiences (Rayaprol 2016). This perspective will also be used as an analytical tool to examine the implementation of restorative justice, particularly in cases of sexual violence, where misinterpretations by the legal apparatus often lead to the erosion of victims' rights, especially for women. The article also highlights how laws, when not applied properly, can create a gap that undermines the protection of women's rights in these cases. To address

this, feminist legal theory will be employed to deconstruct the dominant legal frameworks, revealing how they are shaped by prevailing values, experiences, and power structures that often overlook or marginalize women's lived experiences.

Literature Review

- *Standpoint Feminism*

Standpoint feminism focuses on how the idea of an impersonal subject, emotionally detached from lived experiences, has structurally created domination. This, in turn, systematically excludes women and other marginalised groups. Feminist standpoint theory believes that true knowledge can only be gained when it is rooted in the experiences and perspectives of marginalised groups (Harding 2004). It occurs when marginalised individuals, who are often invisible from the perspective of the epistemically privileged, become aware of their social position regarding socio-political power and oppression (Harding 1993).

Harding (2004) further explained that this theory works as a critique of conventional epistemic standards, as knowledge may invariably come from a variety of places. The theory starts with the idea that powerless societies have different realities due to their oppression. Research from this perspective serves a political purpose by being committed to social action that advocates for oppressed groups (Belknap 2007). Standpoint feminism theory lends itself to social advocacy, which also deals with people who are marginalised in society and seeks to increase their sense of dignity and worth (Swigonski 1994). Therefore, this approach is important to be understood more broadly in the context of handling sexual violence cases by paying full attention to the situation, conditions and experiences of victim-survivors.

If we utilise this theoretical approach, we can look at sexual violence cases more equitably and critically, which is in line with the positioning of victim-survivors as subjects. For instance, PTSD is commonly experienced by victim-survivors of sexual crime. These symptoms include recurring traumatic memories, nightmares, dissociation, intense negative emotions, and so on (Mann 2022). Other cases related to sexual violence experienced by children also need to be distinguished due to their deeper levels of helplessness. In addition,

violence against children also usually takes place over a long period, and there is even a tendency from the closest people to become perpetrators (Pali 2011). Another condition that can be experienced by survivors of sexual violence is social stigma, which not only adds to their trauma but also prevents them from reporting the violence they have experienced. Such a position makes the debate on sexual violence cases nearly endless, reflecting the efforts of feminists who focus on the conditions and experiences of victim-survivors of sexual violence.

- *Restorative Justice*

Restorative justice as a term was first introduced by Albert Eglash, an American psychologist in 1977. In Indonesia, the principle of restorative justice has been applied to juvenile crime as regulated in Law No. 11/2012, known as diversion. Diversion is defined as the transfer of a process from the formal justice system to a process outside of formal justice, and also to eliminate community stigma (Krisnawati 2020).

The implementation of restorative justice is regulated in several law enforcement institutions, such as the Prosecutor's Regulation on Termination of Prosecution Based on Restorative Justice Number 15 of 2020, Decree of the General Director of the General Judiciary of the Supreme Court of Indonesia Number 1691/DJU/SK/PS.00/12/2020, and Police Regulation (Perpol) Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice. These various regulations indicate a shift in the orientation of the criminal justice system from retributive justice to restorative justice. However, this does not mean that retributive justice is entirely abandoned, as restorative justice can only be applied to certain cases.

The Decree of the Directorate General of General Judiciary dated 22 December 2020 affirms legal reform in Indonesia with restorative justice mechanisms. Restorative justice aims to hold perpetrators to account for their harm through a process of shared decision-making involving the participation of the victim to facilitate recovery. In this model, the person responsible for the offence must actively seek to repair the harm caused by their actions, improving the condition of the victim or restoring their well-being (Burns & Sinko 2023). In other words, restorative justice is oriented towards the recovery of the victim caused by the crime or offence. In past studies, the application of restorative justice was

shown to help reduce signs of depression and improve the quality of life, self-esteem, and mental and social well-being of survivors (Akhtar & Barlow 2018).

Restorative justice is a process by which parties who have an interest in a particular offence or crime collectively decide how to deal with the consequences of the offence and its future implications. Braithwaite and Strang explain that restorative justice prioritises recovery over punishment (Sullivan & Tifft 2006). Restorative justice adheres to the principle that all parties in a judicial process, including offenders, should be treated with humanity, equality, and respect for their inherent dignity while honouring their rights to justice and fairness (Johnstone 2022). Howard Zehr also sees restorative justice as a process for engaging parties with an interest in a particular offence and collectively identifying and addressing harms, needs, and obligations, to restore and repair the situation (Zehr 2014).

Tony F Marshall argues that as a collective process, restorative justice is the process of bringing together all parties involved in an offence to collectively address the consequences of the offence and its impact while focusing on repairing harm and preventing future harm (Andrew von Hirsch, Julian Roberts, Anthony E. Bottoms 2003). Braithwaite emphasises that an important aspect of restorative justice is empowerment by paying attention to the needs and empowerment of victims and affected communities, not only the perpetrators. Empowerment also emphasises the non-domination of the state, which complements the other restorative values of forgiveness, healing and apology. Empowerment also entails the willingness and ability to listen respectfully to each party involved in the settlement process, including acknowledging their desire and need for justice (Andrew von Hirsch, Julian Roberts, Anthony E. Bottoms 2003).

Restorative justice is conceptually and practically different from conventional justice. Howard Zehr (2014) argues that restorative justice focuses on the needs of victims and the responsibility of offenders to repair the damage they have done. Zehr points out the distinction as well as the weaknesses of the conventional criminal justice system, that is, the neglect and disempowerment of victims. This is because criminal justice only focuses on the needs of offenders and ignores the needs of the victims. This has the potential to lead to secondary victimisation, where the victim's condition is exacerbated by the process itself (Johnstone 2022). Another difference with the conventional criminal law approach is that

restorative justice prioritises the direct involvement of offenders, victims and the community in the resolution of criminal cases. Restorative justice focuses on the healing of the victim, the rehabilitation of the offender to comply with the law, and the restoration of the harm caused by the crime to society (Senen 2021).

Restorative justice has the potential to offer numerous benefits for victims, offenders, law enforcement institutions, and the wider community. However, not all legal cases can be resolved through restorative justice, especially cases of sexual violence. This is because sexual violence involves power relations that, if failed to be understood or ignored, can worsen and weaken the victim's position in seeking justice and recovery.

Results

Power Relations in Sexual Violence

Sexual violence must not be understood simply as something that arises from uncontrolled sexual desires. Sexual violence needs to be understood more broadly as a form of structural violence, a system that perpetuates the powerlessness of women and other marginalised groups. With a legitimised structure, the practice of sexual violence will continue. Most feminist works try to use Galtung's (1975) concept of structural violence, which refers to a system of patriarchal domination of men over women, masculine over feminine, that produces and legitimises gender-based violence, such as sexual violence. It also includes elements within systems of sexual and gender norms that perpetuate women's structural disadvantage (Elizabeth Frazer 2019). Sexual violence is not entirely a matter of individual pathology but is integral to the systematic domination of women by men (Hudson 2002). This dominating structure refers to a form of violence where social structures or social institutions can disadvantage people by preventing them from fulfilling their basic needs.

In addition to structural problems of insufficient legal handling, the problem of sexual violence can also occur in cases that are unimaginable under formal legal principles. If we pay close attention to the experiences of victims or survivors, sexual violence often occurs because of unequal power relations. This includes when these power relations work in

efforts to resolve cases that have been reported. Komnas Perempuan's records show that not much information is available, only about 15% of the total cases collected by service agencies and Komnas Perempuan. The settlement efforts were predominantly legal (12%) and non-legal methods (3%). In addition, many cases had no clear information on resolution (85%). This data can be further interpreted as highlighting how power relations often silence the voices of victims of sexual violence, marginalising their experiences and hindering their access to justice and recovery.

Power relations often occur in cases of sexual violence where there is a personal relationship or dependency between the perpetrator and the victim. In several sources collected, for example, cases of violence in the personal sphere still dominate the reporting of sexual violence cases, with 99% or 336,804 cases. In complaints recorded by Komnas Perempuan in 2022, cases in the personal sphere reached 61% or 2,098 cases. Meanwhile, in the public domain, a total of 2978 cases were recorded, of which 1,276 were reported to Komnas Perempuan. This indicates that entrenched power relations within personal relationships significantly increase the likelihood of violence occurring. Other data from the IJRS and INFID 2020 Gender Equality Barometer quantitative study report reveals that perpetrators of sexual violence are often individuals known to the victims, namely as many as 40.6% of perpetrators of sexual violence are boyfriends, 27.2% are family members, 17.9% are friends, 8.7% are teachers or lecturers, and 5.6% are bosses or employers (IJRS & INFID 2020).

One common example is domestic violence, where a wife experiences abuse, which is categorised as sexual violence when perpetrated by her husband. Legally, this case is contained in Article 53 of Law Number 23 of 2004 concerning Marital Rape. In the 2021 Annual Record, there were 100 case reports related to marital rape. In 2019, 192 cases were reported (Komisi Nasional Anti Kekerasan Terhadap Perempuan 2021) In this case, the demands on wives who must always meet the needs of their husbands, as patriarchal culture justifies this view, put women often in a helpless position, resulting in the normalisation of rape against wives by husbands. In certain situations, when victims of sexual violence, such as a wife facing abuse from her husband, attempt to report the case under Law No. 23/2004, which is a complaint offence, they are automatically confronted with a complex and difficult

situation. They may have to consider the future of their household, the well-being of their children, and other emotional and financial implications, which can deter them from seeking justice.

The case of unequal power relations also depends on a person's social status or structural position. For example, cases of sexual violence in the educational environment, such as those that occur in universities. Based on existing data, there are 174 cases of sexual violence in the educational environment. These cases occurred both on and off campus, during official campus activities such as community service programmes (KKN), internships, or student events (Komisi Nasional Anti Kekerasan Terhadap Perempuan 2021). A survey of sexual violence in higher education in 2020 consisting of 79 campuses in 29 cities in Indonesia has also been conducted by the Ministry of Education and Culture. The results showed that 77% of lecturers admitted that sexual violence had occurred on their campus. In addition, 63% of sexual violence cases were not reported due to concerns about the institutions' reputations. From this data, victims of sexual violence do not have many opportunities when the case is committed by parties at a higher level of the social hierarchy, such as lecturers and other members of the academia.

Referring to Foucault's view, power relations cannot be localised. This is because power relations are dispersed everywhere. Where there are structures and relations between people, there are also power relations. It is possible to say that in every place, power relations are always at work with their power strategies (Foucault 1979). In other words, the issue of the form of handling through law and its alternatives still opens up space for unequal access to power. As long as the application of the law fails to address the underlying power dynamics that may exist, the process of handling sexual violence cases will continue to face significant obstacles. These power imbalances can influence the willingness of victims to report, the quality of legal proceedings, and the overall effectiveness of justice in such cases.

Patriarchal Construction and Power Relations in the Implementation of Restorative Justice in Indonesia

The implementation of restorative justice pushes the power relations between perpetrators and victims to the periphery. This is related to the context in which sexual violence occurs, whether in the private sphere, the public sphere, or the realm of the state. The application of this legal concept has similar characteristics to the application of customary law in Indonesia. Especially in the case of sexual violence that can occur in various domains. Customary justice is usually carried out by individuals, families, neighbours, or customary chiefs. The main feature of this law is usually the peaceful resolution of disputes to restore the disturbed balance of society (Hadikusuma 1992). In the context of sexual violence, this opens up a space to bring perpetrators and victims together. Prioritising personal relationships with characteristics of tolerance, communal solidarity, and avoidance of disputes. Therefore, the characteristics of the application of restorative justice are already identified with the application of law in society. Through this, cases such as sexual violence can be resolved by prioritising the common good over the position of the victim.

Therefore, we can see that there are striking characteristics in the application of customary law and restorative justice, such as the dominant patriarchal nuances, which tend to place women in a subordinate position. This structural inequality makes it difficult for victims, particularly women, to resist or challenge the system. With this kind of cultural structure, some actors in this context also have a more dominant power. This dominant access to power plays a role in the practice of domination and silencing, which makes it difficult to recognize victims-survivors who struggle to report their cases or have their cases resolved. Sexual violence is thus not only understood as a problem of individual pathology but is an integral part of the systematic domination of women by men (Hudson 2002). This dominating structure refers to a form of violence where social structures or social institutions can harm people by preventing them from fulfilling their basic needs.

From the feminist standpoint, which attempts to move the epistemic point from the context of dominant thought towards marginalised groups, the above highlights a more comprehensive approach to addressing sexual violence cases. This theoretical shift situates the mind in a pluralistic perspective, thus enabling the vision and realisation of more

equitable social relations (Collins 1990). Sexual violence is then viewed more broadly from a micro or interpersonal lens to one that sees sexual violence as a product of the cultural systems that indirectly shape it (Sanday 1981). In other words, sexual crimes are no longer seen entirely as deviant behaviour but are practices that can occur in a culture that maintains male supremacy over women.

Through such theoretical work, we can understand how victims of sexual violence are placed at a distinct disadvantage. The patriarchal nuances inherent in Indonesia's social and legal institutions lead to the application of laws that lack a gender-sensitive perspective. This tendency shows that patriarchal constructions can still shift from traditional to modern institutions. In the form of applications of legal settlements that do not attempt to review how victims in cases of sexual violence face the social pressures around them to maintain the existing order. For example, this often involves prioritizing the preservation of family and institutional reputation and social unity, while expecting victims to bear the burden of their suffering in silence.

Without gender sensitivity and alignment with law enforcement officials, power relations cannot be dismantled. Sexual violence cases, most of which victimise women, involve power relations between perpetrators and victims and have a prolonged psychological impact, such as trauma, anxiety, and symptoms of depression, major depression, and post-traumatic stress disorder, which may lead victims to risky actions (Aditya 2016). According to Wemmers (2002), the application of restorative justice that prioritises restoration or reconciliation between perpetrators and victims in cases of sexual violence can put a more psychological burden on victims to forgive perpetrators, often resulting in the victim being expected to participate in a process that appears to favour supporting male perpetrators over addressing their own needs and rights. Accordingly, restorative justice can strengthen power relations and increase the risk of secondary victimisation of female victims (Cossins 2008). Therefore, in cases of sexual violence, the application of restorative justice does not fully restore the victim's well-being but instead exacerbates the victim's situation.

As a legal application, restorative justice is not limited to a particular programme, but to espousing values that seek to engage disputants while also seeking restorative processes and outcomes, and avoiding retribution (IJRS 2022). In this context, the application of restorative justice is dangerous in cases with unequal power relations. This concern arises when perpetrators have the opportunity to manipulate victims to minimise the violence they have committed. This unequal position in power relations arises, for example, in domestic life, specifically in husband-wife relationships. The economic disparity between the perpetrator and the victim also creates an opportunity for the victim to be further suppressed, as the perpetrator may leverage their financial power to coerce or manipulate the victim into silence or compliance. In the work environment, employment status can also put a person in a subordinate position, such as when the victim is dealing with a supervisor as an actor who has a higher employment status.

In addition, power inequality is also closely related to age, especially between children and adults. Even in cases of violence against children throughout 2023, according to the Child Protection Commission (Komnas PA), there were 3,547 complaints of cases of violence against children, of which 1915 complaints were cases of sexual violence. This kind of power relationship is laden with manipulative behaviour by sexual offenders, which shows that they tend to have little capacity for empathy. Pamela Rubin (2003) explains that for some men who become perpetrators of sexual violence, the victim's suffering is exciting for them. This can be an indication that the offender has control over the victim's body.

Power relations may also be in the form of structural violence or systems that maintain women and other groups as powerless. This is reflected in Police Regulation Number 8 of 2021, which ignores the existence of power relations in cases of violence against victims, as well as shows the absence of partiality towards victims of sexual violence by not excluding sexual violence to be resolved through restorative justice. This regulation is criticised by feminist legal theory, deeming it discriminatory, which reinforces patriarchal or male-dominated social relations. These social relations are based on men's norms, experiences and power and ignore women's experiences. The law is considered to contribute to the oppression experienced by women because it is solely built based on male values and perspectives (INFID 2020). This means that Police Regulation No. 8 of 2021 is made only

based on men's perspectives and ignores women's experiences in cases of sexual violence. This regulation also contributes to reproducing structural violence in the legal sphere. This is detrimental to victims, as it prevents them from fully exercising their rights as survivors of sexual violence, further entrenching their vulnerability and hindering their access to justice and recovery. Standpoint feminism also criticises policies and laws that do not fully understand the problems of vulnerable groups because they do not put women's epistemic position first. Instead of receiving justice and restoration, victims of sexual violence experience structural violence in the restorative justice process.

Barriers to the Implementation of the TPKS Law for Victims of Sexual Violence

In terms of protecting victims' rights, the TPKS Law has regulated case reporting mechanisms related to evidence, reporting, and victim protection to fully guarantee victims' rights, including protection. This is because, so far, the issue of evidence has often been used as an excuse by law enforcement authorities to ask victims to withdraw reports and use restorative justice to resolve cases. As is known, evidence has been the biggest obstacle for victims of sexual violence to report. The situation becomes more complex when law enforcement officials lack impartiality and a gender-sensitive perspective, as this can result in biased handling of cases and further marginalisation of victims. Rape incidents that only involve the perpetrator and victim in a private place, where only the perpetrator and victim are present, and where the victim takes time to report the crime, are often dismissed by law enforcement officials as insufficient evidence. Victims need mental readiness to report and prove. However, these factors are often easily ignored by law enforcement officials. Furthermore, there is a discriminatory view of the authorities that require victims (who are mostly women) to identify themselves as 'ideal victims' (Hudson 2002). If they do not fit into that category, law enforcement officials are reluctant to follow up on the report or suggest the report be withdrawn.

Women as 'ideal victims' refer to being covered up or unprovocative, not drunk, in their own home, not going out at night, the victim must not have had sex with the perpetrator before, and the victim must refuse sexual intercourse loudly and clearly, and it is helpful if she is physically injured in her refusal of sexual violence. These requirements further

discredit women in public affairs, emphasising the need for regulations that protect the integrity of their bodies from exploitation and harm. The 'ideal victim' category is still the benchmark for women victims of sexual violence in Indonesia to be truly seen as victims. The further the ideal type of victim, the stronger the sense of self-distrust in the victim. Victims do not dare to report because they feel that the evidence of the crime is not sufficient to convince the authorities that they have experienced an event that has taken away their bodily integrity. The limited interpretation of 'victim' and the lack of impartiality towards victims are key reasons why law enforcement officials impose peace in the name of restorative justice, often prioritising reconciliation over the true needs and rights of the victim.

The simplistic and patriarchal perspective of law enforcement officers also results in the neglect of victim recovery. For example, in the case of rape, marrying the perpetrator and the victim is considered by police officers as part of restorative justice, even though marriage is not a solution for victim recovery (ICJR 2019). This practice is increasingly established when the community considers it normal. A survey conducted by Ma-PPI FHUI (2016) found that 51.6% of Indonesians consider marriage between the perpetrator and victim of sexual violence as a justification to reduce the punishment for the perpetrator. However, there is also a biased perspective in society, which considers cases of sexual violence a disgrace. Consequently, marrying the perpetrator and victim is considered to cover the victim's and the family's shame. This results in the trivialisation of sexual violence cases and the trauma experienced by victims. Another biased view from society is that sexual violence is caused by the victim. In this case, women are often targeted to be blamed for the crime. This includes the portrayal of individuals, particularly women, in sexually suggestive ways, such as wearing revealing clothing, miniskirts, or excessive facial makeup, which can contribute to objectification and perpetuate harmful stereotypes (Katjasungkana 2016).

Focusing on the experiences of survivors of sexual violence, a feminist standpoint discovers that not only is the physical and mental violence experienced, but the process of handling it is often problematic. This includes when mediation attempts are made with the decision to marry the perpetrator and victim. This is even considered to reduce the stigma that exists and reduce the victim's shame. This traps victims in a circle of violence. They have

the potential to experience multiple forms of violence. Perpetrators are also increasingly favoured in this context. In other words, the handling process by families or legal institutions is not considered a crime.

A report by the Indonesia Judicial Research Society (IJRS) and the International NGO Forum on Indonesian Development (INFID) found that almost 60% of respondents who had experienced cases of sexual violence did not receive adequate resolutions to the criminal offences they faced. In addition, 39.9% of respondents reached a settlement where the perpetrator paid some money, while 26.2% of other respondents ended up marrying the perpetrator (IJRS and INFID 2020). This cannot be separated from the view of our society and the legal process that still trivialises the victim's experience and what rights should be fulfilled. Marriage takes away victims' rights to recovery and security (IJRS 2022). Article 10, Paragraphs 1 and 2 of the TPKS Law even explicitly states that forced marriage between the perpetrator and the victim of rape is punishable with nine years in prison.

In addition to the practice of marrying the perpetrator to the victim, other deviations in the restorative justice practices include forced termination of cases and 'peaceful' mediation. This case occurred in Rokan Hulu, Riau, which happened to a 19-year-old mother. Several members of the Tambusai Utara Police Station intimidated and forced the victim and her husband to agree to reconcile with the perpetrator. The victim and her husband were also threatened with being suspects if they insisted on not reconciling (CNN Indonesia 2021). Another case occurred to a junior high school student in Tuban. Reporting from detik.com on 22 July 2022, the victim gave birth to a baby after being raped by the son of a local cleric. Based on information from the victim's family, the victim would be married off to the perpetrator who raped her. The victim's family also did not report to the police. The police also told them to make an amicable agreement, witnessed by the Head of the Village. From the two cases above, it can be demonstrated that the mechanism to reconcile the perpetrator and victim has been misused to stop the investigation of the case.

The TPKS Law regulates the rights of victims that must be fulfilled, including the right to treatment, protection, and recovery (Article 67). Article 70 also explicitly regulates in detail the victim's right to recovery. Paragraph 1 of Article 70 mentions victims' rights to recovery, including medical rehabilitation, mental and social rehabilitation, social

empowerment, restitution and/or compensation, and social reintegration. This means that the TPKS Law adequately accommodates the personal rights of victims and the social rights of victims who have been damaged by acts of sexual violence that have befallen them. Viewed from a feminist standpoint, the TPKS Law has fully prioritized the needs of vulnerable groups because it places women's epistemic position in the main position.

However, the implementation of restorative justice through regulations in law enforcement institutions has the potential to eliminate the rights of victims as regulated by the TPKS Law. On the right to treatment, the application of restorative justice can spare the perpetrator from criminal punishment. Some feminist experts fear that this shift allows the perpetrator to move from the realm of conventional criminal justice to the private sphere, enabling them to evade accountability and the opportunity to escape punishment (Daly & Stubbs 2006). As a result, cases are not handled in the way that victims expect, which deprives victims of justice. Perpetrators who avoid arrest or criminal punishment by marrying the victim or pressuring them to drop the case through intimidation may further victimise the individual due to the power imbalance between the victim and the perpetrator (Jülich & Buttle 2010) or jeopardise the safety of survivors and their future (Cameron 2006; McGlynn et al. 2012; Pali and Madsen 2011).

The victim's right to protection from the demeaning attitude and treatment of law enforcement officials is also often ignored. Settlement through restorative justice makes law enforcement officials the sole authority that determines the fate of the victim. This is where discriminatory practices against victims by law enforcement officials can occur. The attitude of the apparatus that lacks sympathy and empathy, demeans by stigmatizing, and blaming the victim is part of the victimization that adds to the victim's suffering. This phenomenon was experienced by a rape victim in Boyolali. When she wanted to report her case, she was harassed and ridiculed by the Head of the Criminal Investigation Unit (Kasatreskrim), Eko Marudin, which led to her dismissal (Kompas 2022). This is one of the impacts of ignoring the TPKS Law. When referring to the TPKS Law, it is clear that law enforcement officials should maintain a victim's perspective (article 21). Law enforcement officials are also not allowed to intimidate, justify mistakes, and carry out victimization in the examination process, including by asking tricky questions that can traumatize victims (article 22). The

TPKS Law emphasizes actions that must be avoided by law enforcement officials in the examination of victims. Meanwhile, the practice of restorative justice often ignores these principles and increases the vulnerability of victims.

Neglecting the victim's right to recovery also occurs when restorative justice by law enforcement officials is often misinterpreted as marrying the perpetrator and victim. This has the potential to cause harm to victims, such as not getting the right to recovery, and the perpetrator can be free from the threat of criminal punishment. IJRS criticises the restorative justice model in the form of marrying the victim with the perpetrator. The criticism is based on several reasons. First, it harms the victim, benefiting the perpetrator. The practice of marriage is considered by most people as a form of ideal middle ground for perpetrators and victims. This way of thinking is because the community considers sexual violence to be a disgrace for the victim and her family, so marriage is considered a solution to this disgrace. This also provides an excuse to lighten the perpetrator's sentence. Second, forcing reconciliation, ignoring the rights of the victim. Marriage between the perpetrator and victim is an attempt to force reconciliation. For example, in the case of rape, victims—mostly women—who still have psychological burdens and trauma and experience material and non-material losses for the rape incident are forced to forgive the perpetrator. This has the potential to victimise the individual. This is where the application of restorative justice in sexual violence is controversial (Keenan 2014).

Although there are still barriers to its implementation, the TPKS Law is both a history and a milestone in the settlement of sexual violence cases in Indonesia. The TPKS Law is in principle in line with the spirit of a feminist standpoint grounded in the aspiration to create social transformation (Gerung 2016), by prioritising the rights of victims who have often been ignored by other laws regarding sexual violence. The transformation of the TPKS Law is manifested in the fulfilment of victims' rights so that victims escape vulnerability, receive justice and recovery, and are empowered. The TPKS Law also prioritises the position and experience of victims as a source of knowledge to restore justice. This includes dismantling the practice of perpetuating injustice to victims in the settlement process. Thus, the TPKS Law needs to be implemented in various law enforcement institutions. Awareness and sensitivity to gender issues must also be possessed by law enforcement officials so that the

enactment of extrajudicial case settlement mechanisms such as restorative justice no longer occurs.

Conclusion

Sexual violence cases in Indonesia are often resolved using restorative justice mechanisms by institutions and law enforcement officials, which is often understood as simply terminating the case. In addition, other practices show that restorative justice is misused to force the victim to reconcile with the perpetrator. As a result, victims experience re-victimisation and lose their rights such as the right to remedy, protection, and recovery. Restorative justice reopens memories of sexual violence experienced by victims, which triggers traumatising feelings and deep psychological burdens. In addition, settlement through restorative justice also often leads to marriage between the perpetrator and the victim, which has the opportunity to ease the punishment of the perpetrator and neglect the rights of the victim. The practice of restorative justice, in this case, can benefit the perpetrator and harm the victim. Instead of supporting the victim, restorative justice can worsen the victim's condition.

The presence of the TPKS Law affirms that sexual violence cases must be resolved through criminal justice and eliminates the practice of out-of-court settlements, including restorative justice, which can deteriorate the victim's condition. However, the TPKS Law as a new legal substance that protects the rights of victims of sexual violence, faces two main challenges in implementation, the absence of derivative regulations and the contradiction with legal regulations on restorative justice.

Hence, law enforcement institutions such as the police, the judiciary, and the Supreme Court must immediately update the legal rules in all institutions by adjusting the provisions in the TPKS Law, especially concerning restorative justice. The application of restorative justice in sexual violence cases contradicts the TPKS Law, which prohibits sexual violence cases from being resolved outside the judicial process. Other issues, such as case management and the mechanism for examining witnesses or victims, also need to be updated to include the provisions of the TPKS Law. This approach aims to ensure that victims

are no longer vulnerable, empowering them while protecting them from intimidation and undue intervention by perpetrators or law enforcement officials.

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