Rumfeka, Erllyn Vilenchia, Rahmat Syahril Ulath. "Vulnerability of Victims of Sexual Violence from the Perspective of National Law and Customary Law in Papua" *Papua Law Review* 1 no. 1 (2026): 10-17.

PapuaLawReview

Volume 1 Issue 1, 2026
E-ISSN: 3163-978X
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Vulnerability of Victims of Sexual Violence from the Perspective of National Law and Customary Law in Papua

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Abstract: Sexual violence remains a serious concern in Indonesia, particularly in Indigenous communities where victims often encounter legal, cultural, and social barriers to accessing justice. In Papua, customary values and community-based dispute resolution mechanisms continue to play an important role in responding to criminal acts, including sexual violence. This study examines the vulnerability of victims from a victimological perspective by exploring the interaction between state law and customary law in fulfilling victims' rights. Employing a normative legal research method, the study analyzes the implementation of Law Number 12 of 2022 on the Crime of Sexual Violence (TPKS Law) in relation to the realities of customary communities in Papua. The findings indicate that although the TPKS Law provides a comprehensive legal framework for victim protection, its implementation remains limited at the local level. Victims continue to experience difficulties in obtaining restitution, access to safe shelters, and long-term psychological recovery due to bureaucratic obstacles, limited institutional capacity, and inadequate coordination between formal legal institutions and customary authorities. In several Indigenous communities, customary dispute resolution may prioritize social harmony and communal reconciliation over victims' rights, potentially limiting access to comprehensive legal protection. This study emphasizes the importance of strengthening collaboration between state institutions and customary leaders to ensure that victim-centered justice is achieved while respecting the cultural values and legal traditions of Indigenous Papuan communities.

Keywords: Victimology, Sexual Violence, Victims' Rights, TPKS Law, Secondary Victimization.

1. Introduction

The problem of sexual violence in Indonesia is currently at a very alarming level, and the patterns of crime are increasingly complex within society. According to official data, the number of cases of sexual violence continues to increase sharply each year with no significant signs of decline. This issue is crucial and urgent to discuss because victims in our legal system are often extremely vulnerable, both physically, mentally, and socially. Unfortunately, our criminal law enforcement system is still often trapped in an outdated pattern that tends to be too offender-oriented. Law enforcement officers typically focus solely on proving the elements of the crime to punish the perpetrator as severely as possible, while fulfilling the substantive rights, security protection, and long-term trauma recovery needs of victims are often neglected or simply considered a formality to complete the file.

This stark inequality in the criminal justice system has drawn serious attention and sharp criticism from legal academics. Many experts emphasize that fair law enforcement should not focus solely on revenge against the perpetrator, but rather prioritize restoring the victim's rights to their original status. If lower-level officials lack sensitivity and regard for the victim's psychological trauma, victims of sexual violence will continue to experience double trauma, or secondary victimization, due to dealing with a rigid legal bureaucracy. This phenomenon is exacerbated by law enforcement officials' lack of understanding of a gender perspective in handling cases involving profound psychological vulnerability. As a result, victims often experience unempathetic treatment during the investigation and trial process, leading to their reluctance to seek justice.

The enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) is a breath of fresh air, containing highly progressive guarantees for victims' rights. This law addresses the failure of the previous legal system to provide comprehensive protection. However, in reality, at the regional operational level, the implementation of this new law continues to face challenges.

A major barrier lies in the form of sectoral egos between implementing agencies and a lack of victim-friendly legal support facilities. Furthermore, budget constraints at the regional level make shelters and psychological support services difficult for communities in remote areas.[1]

This legal research was conducted using normative juridical research methods through a legislative approach and a conceptual approach that thoroughly examines literature. This article aims to analyze the roots of structural vulnerabilities experienced by victims of sexual violence, while simultaneously evaluating the effectiveness of fulfilling their rights in the real world after the new regulation was passed. The main issue highlighted in this study centers on why the right to restitution, security guarantees, and long-term psychological recovery services are still very difficult for victims in various regions in Indonesia to access, even though positive legal instruments are formally available. The relevance of this research is expected to contribute theoretical thinking to the development of criminal law science oriented towards victim protection and serve as practical recommendations for strengthening institutional capacity in the regions.

2. Research methods

This study employs normative legal research, which examines legal norms in legislation and legal doctrines related to the research object. The approaches employed include a statutory approach to analyze the guarantees of victims' rights in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, and a conceptual approach to examine the concept of victim vulnerability through the lens of contemporary victimology.

[1]M. Aris, "Legal Protection for Victims of Sexual Violence Crimes from a Victimology Perspective", Journal of Law and Justice, Vol. 10, No. 2, 2023, p. 145; Ahmad Rifai, "Implementation of the TPKS Law: Challenges and Obstacles at the Regional Level", Journal of Legal Studies, Vol. 4, No. 1, 2024, p. 88; and Dian Permata, "Secondary Victimization in Criminal Justice", Indonesian Journal of Victimology, Vol. 2, No. 3, 2023, p. 210.

The legal materials used include primary legal materials in the form of the TPKS Law, as well as secondary legal materials consisting of scientific journals, textbooks, and legal literature related to victimology. All legal materials were analyzed using descriptive-qualitative methods to provide a comprehensive explanation of the realities of the challenges in fulfilling victims' rights. The main focus of this research is to examine the gap between normative legal protection and the structural and social barriers experienced by victims of sexual violence in Indonesia.[2]

3. Discussion

3.1. Vulnerability of Victims of Sexual Violence from a Victimology Perspective.

From a victimological perspective, victims of sexual violence are no longer viewed as passive objects in the criminal justice process, but rather as legal subjects experiencing multidimensional vulnerabilities. Contemporary victimology emphasizes that victims' vulnerability is not simply a matter of bad luck, but rather the result of social construction and the failure of the legal system to provide adequate protection. Victims often find themselves in a power imbalance relative to their perpetrators, whether due to power relations, age, or socioeconomic dependency.

This vulnerability is further exacerbated when the justice system places victims in an increasingly disadvantaged position. Unempathetic and protracted investigations often lead to secondary victimization, where the victim's trauma is relived by a rigid legal bureaucracy. From this perspective, victim protection must be holistic, oriented not only toward punishing the perpetrator but also toward restoring the victim's physical and psychological well-being as part of restorative justice.[3]

Societal stigma and a culture of victim blaming create fundamental challenges for victims. A legal system that demands an "ideal victim" often casts doubt on victims' credibility due to the trauma they experience. The law should be there to ensure safety, not add to victims' psychological burdens.[4]

3.2. Challenges in Fulfilling Victims' Rights in the TPKS Law

Although Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) contains progressive provisions regarding victims' rights, its implementation at the operational level still faces serious obstacles. One of the main challenges is the issue of sectoral egos between law enforcement agencies, which results in inefficient case handling. Overlapping authority often

[2]Soerjono Soekanto and Sri Mamudji, Normative Legal Research: A Brief Review, (Jakarta: Rajawali Pers, 2015), p. 52; and Eddy OS Hiariej, Principles of Criminal Law, (Jakarta: Cahaya Atma Pustaka, 2016), p. 128.

[3]Arif Gosita, Problems of Crime Victims: A Collection of Essays, (Jakarta: Akademika Pressindo, 2016), p. 48; and Mardjono Reksodiputro, Indonesian Criminal Justice System, (Jakarta: Center for Justice and Legal Services, 2017), p. 72.

[4]EY Kanter and SR Sianturi, Principles of Criminal Law in Indonesia and Their Implementation, (Jakarta: Storia Grafika, 2012), p. 156; and compare with the opinion in David M. Klippel, Victimology and the Criminal Justice System, (London: Oxford University Press, 2020), p. 89.

occurs, resulting in slow fulfillment of victims' rights to restitution, security guarantees, and trauma recovery services.[5]

Besides coordination barriers, another fundamental obstacle is the lack of victim-friendly legal support facilities at the regional level. The TPKS Law mandates the provision of shelters and psychological support services, but the availability of such infrastructure remains extremely limited. The lack of regional budgets to operate these services leaves victims, especially those in remote areas, struggling to bear the burden of recovery costs alone. This creates disparities in access to justice, where the protection guaranteed by law is only available to those with good geographic and economic accessibility.[6]

Beyond infrastructure and budgetary factors, the most crucial challenge lies in the persistently weak victim-centered perspective among law enforcement officials. Many legal practitioners in the field remain trapped in a formalistic mindset, focusing solely on proving criminal acts without regard for the victim's psychological well-being. The lack of specific training on handling sexual violence cases from a gender perspective often leads officers to inadvertently engage in intimidating or victim-blaming actions. Without ongoing mentality reform and institutional capacity building, the guarantees of victims' rights stipulated in the TPKS Law risk remaining merely legal norms on paper without any real impact on those most in need of protection.[7]

3.3. Optimizing Psychological Recovery as a Form of Restorative Justice.

Restoring the rights of victims of sexual violence cannot be achieved solely through compensation or financial restitution. From a victimological perspective, the psychological dimension of recovery is the most crucial pillar for restoring the victim's dignity. Sexual violence often leaves deep trauma that is destructive to mental health, which, if not professionally addressed, can cause long-term psychological damage to the victim.

However, the reality in Indonesia shows that access to mental health services for victims of sexual violence remains sporadic and relies heavily on initiatives from non-governmental organizations (NGOs) and women's organizations. The government often fails to make psychological support an integral part of the criminal justice system, a mandatory and systematic provision across all regions. As a result, victims often stall out, feeling they lack adequate support during the grueling legal process.

Therefore, a shift in the legal paradigm is needed from punitive justice, which focuses solely on punishing the perpetrator (offender-oriented), to a more humane and victim-centered concept of restorative justice. Restorative justice requires the state to facilitate a safe recovery space, where victims have the right to mental health services, trauma counseling, and ongoing social

[5]Barda Nawawi Arief, Criminal Law Policy: Developments in the Drafting of the New Criminal Code, (Jakarta: Kencana, 2018), p. 210.

[6]National Commission on Violence Against Women, Annual Report: Challenges in Implementing the TPKS Law at the Regional Level, (Jakarta: National Commission on Violence Against Women, 2025), p. 35

[7]Harkristuti Harkrisnowo, "Victim Protection in the Criminal Justice System in Indonesia", Journal of Law & Justice, Vol. 9, No. 2, 2024, p. 142.

support without fear of stigmatization. The state's presence in facilitating this recovery is not merely an administrative obligation, but an absolute prerequisite for the creation of substantive justice that humanizes victims within our legal system.[8]

Table 1.Optimizing psychological recovery as a form of restorative justice

Psychological Recovery Aspects	Problems	Optimization Strategy	Contribution to Restorative Justice	Source
Psychological recovery of victims	Trauma, anxiety, fear, loss of security	Psychological support, trauma counseling, psychosocial services	Helping victims recover emotionally so they can participate voluntarily in the restorative process.	Dandurand, Vogt, & Lee (2020) (UNODC)
Victim empowerment	Victims have no space to express their suffering	Provide an opportunity for victims to convey the impact of the crime (victim impact)	Victims gain recognition, validation, and a sense of justice through restorative dialogue.	Dandurand et al. (2020) (UNODC)
Responsibility of the perpetrator	Low empathy and awareness of the impact of one's actions	Counseling, reflection, apology, and fulfillment of compensation	Encourage the perpetrator to admit mistakes, take responsibility, and repair the damage caused.	UNODC (2025) (The United Nations in Indonesia)
Family support	Family conflict and psychological stress	Family counseling and family involvement in the resolution process	The family becomes a support system for both victims and perpetrators in the recovery process.	Dandurand et al. (2020) (UNODC)
Social reintegration	Stigma against victims and perpetrators	Community education, community mediation, and reintegration programs	Restoring social relations and reducing stigmatization to create social harmony.	UNODC (2025) (The United Nations in Indonesia)
Law enforcement approach	Focus on punishment rather than restoration	Restorative and trauma-informed approach training	The authorities facilitate a process that is safe, voluntary, respectful of the dignity of the parties, and recovery-oriented.	Dandurand et al. (2020) (UNODC)

[8]Lilik Mulyadi, Restorative Justice in the Criminal Justice System, (Bandung: Alumni, 2019), p. 112; and see also, Eva Achjani Zulfa, Shifting the Sentencing Paradigm in Indonesia, (Jakarta: RajaGrafindo Persada, 2011), p. 95.

Psychological Recovery Aspects	Problems	Optimization Strategy	Contribution to Restorative Justice	Source
Multidisciplinary collaboration	Recovery services are not yet integrated	Cooperation between psychologists, social workers, prosecutors, investigators, mediators and legal aid institutions	Psychological recovery takes place in a comprehensive and sustainable manner.	Dandurand et al. (2020); UNODC (2025) (UNODC)

*Source:*Author processed based on Dandurand, Y., Vogt, A., & Lee, J. (2020). Handbook on Restorative Justice Programs (2nd ed.). United Nations Office on Drugs and Crime (UNODC); and Restorative Justice Pocketbook (UNODC, 2025).

Table 2. Vulnerability Matrix and Challenges to Fulfilling Victims' Rights in Indonesia

Vulnerability Categories (Victimology Perspective)	Forms of Risk of Victimization	Challenges of Fulfilling Rights in Indonesia
Vulnerable Ages (Children & Elderly)	Physical helplessness, manipulation of power relations, vulnerability to incest and grooming.	Limited witnesses/evidence, child-unfriendly judicial processes, and future trauma.
Gender & Sexual Orientation (Women, Gender Minorities)	Social construction that places women in a subordinate position, the threat of gender-based violence.	The culture of victim blaming that hinders reporting, social stigma in society.
Socioeconomic & Disability	Financial dependence on the perpetrator, limited access to communication and intellectual disabilities make it difficult to provide evidence.	Lack of free legal assistance, barriers to accessibility of medical and psychosocial services in the region.
Power Relations (Institutional, Academic, Work)	Exploitation of position, academic threats (grade/job security), perpetrator's domination of the victim.	Internal resolution of cases (institutional impunity), victims' concerns about their future/career.

*Source:*The Constitutional Court of the Republic of Indonesia regarding the TPKS Law,discussed in depth in the research of Febriani et al (2026) inIstiqomah

Journal.https://ejournal.edutechjaya.com/index.php/komprehensif/article/view/1876,https://scholar.ui.ac.id/en/publications/right-to-be-forgotten-as-a-legal-protection-for-the-victims-of-el/

4. Conclusion

Based on the research results, it can be concluded that victims of sexual violence are a group with a high level of vulnerability, both physically, psychologically, socially, economically, and legally. From a victimology perspective, victims are no longer viewed merely as those who suffer losses due to a crime, but rather as legal subjects who have the right to receive protection, respect, recovery, and access to justice comprehensively. The vulnerability experienced by victims is not only caused by the perpetrator's actions, but is also influenced by various structural factors, such as a culture of victim blaming, social stigma, unequal power relations, and a law enforcement system that is not fully oriented towards the interests of victims.

This research also shows that the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) represents a significant step forward in legal reform in Indonesia, providing more comprehensive recognition of victims' rights. The TPKS Law regulates various forms of protection, including the right to restitution, rehabilitation, legal assistance, health services, security protection, and psychological recovery. However, the implementation of these provisions still faces various challenges in practice. Obstacles include weak inter-agency coordination, limited regional budgets, limited availability of safe houses (shelters), a shortage of professionals in psychology and victim assistance, and a unequal understanding of the victim-based approach among law enforcement officials. These are the main factors contributing to the under-fulfillment of victims' rights.

Furthermore, this study confirms that psychological recovery is an integral part of the law enforcement process for sexual violence. While punishing perpetrators is crucial as a form of legal accountability, true justice will not be achieved if victims continue to endure prolonged trauma without adequate support. Therefore, the concept of restorative justice, which focuses on victim recovery, needs to be continuously strengthened through the provision of trauma counseling, psychosocial rehabilitation, victim empowerment, family support, and ongoing social reintegration.

Effective victim protection requires synergy between the central government, local governments, law enforcement officials, witness and victim protection agencies, health workers, psychologists, academics, civil society organizations, and all elements of society. Strengthening the capacity of officials through training on victimology, human rights, and gender equality is also a crucial step to prevent secondary victimization during the legal process. Furthermore, the government needs to ensure adequate budgeting and infrastructure to ensure equitable access to all victim services, including those in remote areas.

Ultimately, this research is expected to contribute to the development of victimology studies in Indonesia and serve as evaluation material for policymakers in strengthening the implementation of the TPKS Law. Protection for victims of sexual violence should not stop at normative regulations in legislation, but must be realized through concrete policies and actions that guarantee the fulfillment of victims' rights in a fair, humane, and sustainable manner. Thus, the Indonesian criminal justice system is expected to be able to deliver justice that is not only oriented towards punishing perpetrators, but also towards restoring the dignity, honor, and quality of life of victims as the primary goal of just law enforcement.

Thank-you note

The author expresses his gratitude to God Almighty for all His grace, mercy, and blessings, enabling him to successfully complete this scientific article. Without His help, the entire research process, from the beginning to the end of this article, would not have been possible. The author expresses his deepest appreciation and gratitude to the Law Study Program of the

Muhammadiyah University of Education Sorong (UNIMUDA) for providing academic support, facilities, and a conducive scientific environment so that this research can be well-compiled. The author also expresses his gratitude to all lecturers who have provided knowledge, direction, motivation, and guidance during the lecture process and the preparation of this scientific article. The author's highest appreciation is extended to all book authors, researchers, and academics whose works serve as reference sources in this research. Various scientific ideas that have been published through books, journals, and laws and regulations have made a very significant contribution in enriching the analysis and strengthening the arguments presented in this article. The author also expresses his gratitude to all parties who have directly or indirectly provided assistance, support, input, and motivation during the process of compiling this research, both in the form of scientific discussions, constructive criticism, and moral support so that this research can be completed on time.

The author fully acknowledges that this article still has several limitations, both in terms of the scope of the discussion and the depth of analysis. Therefore, the author greatly appreciates constructive criticism, suggestions, and input from readers, academics, and legal practitioners as material for evaluation and improvement of future research. The author sincerely hopes that this article will benefit the development of legal science, particularly in the field of victimology and the protection of victims of sexual violence, and serve as a useful reference for further research and for strengthening victim protection policies in Indonesia.

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Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

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