

Intelligence Analysis: Delays in the Formation of the Crime of Sexual Violence Law and It's Derivative Regulations

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ABSTRACT

This research is motivated by the increase in sexual violence numbers, both against women and other vulnerable groups. Sexual violence requires legislative intervention which in its process faces obstacles because of the appearance of controversy. The controversy affects the slow process of approval of the law and its derivative rules. Using the concept of strategic intelligence analysis, this research was carried out. Qualitative approach with descriptive type, research using document study and interviews as data collection techniques. Data suggests that reviewed strategic intelligence analysis fails due to factors of lack of knowledge about sexual violence and its implications, besides the concept of strategic intelligence analysis for mapping conflict and contesting actors has not been used in the policy formulation process. These weaknesses affect the extent to which the state budget is being used to allocate prolonged regulatory formulation, in addition to affecting the social and psychological costs to the victims and existing support systems, including law enforcement and victim protection. Recommendations to all stakeholders, first of all relating to the intelligence function of information sharing, enhancing intelligence capacity especially at the knowledge level, as well as encouraging enhanced cooperation and collaboration among actors to jointly strive for Indonesia to be free from sexual violence.

INTRODUCTION

Cases of sexual violence are one of the cases that have increased significantly, data from the National Commission for Women (*Komnas Perempuan*) in 2021 saw a spike in cases of gender-based violence, namely 338,496 cases recorded, which is almost 50% of 2020. Data from the Ministry of Women's Empowerment and Child Protection states that there were 11,016 cases of sexual violence in 2022.

Sexual Violence tops the list as the type of violence often experienced by victims throughout 2022, the data has increased again in 2023 by 14,759 cases with 2,888 cases of sexual violence against men and 13,162 cases of sexual violence against women. The data shows a significant increase from 2022 to July 2023, which is 3,473 cases. INFID surveyed 2,210 respondents throughout Indonesia in Mei-July 2020. Survey is performed via telephone with method multistage cluster sampling (Chan & Sachs, 2023; Jewkes & Dartnall, 2023).

From the description above, sexual intercourse is a case of inequality that has a large degree of bias. Of the number of participants mentioned, 65.1% of researchers admitted to having experienced sexual intercourse. As many as 27.4% of respondents have experienced forced marriage. 12.3% of respondents had ever been forced to use contraception. Then, as many as 12.2% of respondents had

received forced abortion. There were 8.4% of respondents who admitted to engaging in sexual activities because they were harmed. A similar number was seen in women who admitted to engaging in sexual activities and were threatened with harm. As many as 7.1% of respondents engaged in sexual activities because they were lured. 6.3% of respondent engaged in sexual activities because they were threatened with not having a living wage. Meanwhile, 6% of employees involved in sexual activities were threatened with being fired, divorced, expelled from school, etc (Buss, 2023; Hiebertis, 2023; Lacroix et al., 2020; Reidy et al., 2023).

The establishment of the Sexual Violence Elimination Bill (RUU PKS) was motivated by the increasing number of victims of sexual violence crimes in Indonesia (Wismayanti et al., 2019, 2021). Prior to the enactment of the Sexual Violence Law (TPKS Law), when sexual violence cases occurred, law enforcement focused on existing regulations, such as the Criminal Code (KUHP), the Law on the Protection of Victims of Domestic Violence (Law Number 23 of 2004), the Law on Trafficking in Persons (Law Number 21 of 2007), and Law Number 35 of 2014 concerning Child Protection (N Jamal et al., 2019; Turner et al., 2022). According to Aryani (2021), the polemic against this bill arises because, when viewed from the facts, it does not seem to justify if the draft law that is expected to fill the legal vacuum related to sexual violence is ignored (Franklin & Herek, 2022; Nurbayani et al., 2022; Suh, 2023).

In Indonesia, sexual violence crimes are regulated in the Niomior Law 12 of 2022 concerning Sexual Violence Crimes (TPKS Law). The TPKS Law is a new law that was passed on Sielasa, April 12 2022, which was drafted in 2016. The passing of the TPKS Law which was carried out by the government served as a legal umbrella for the protection of sexual relations in Indonesia. The TPKS Law consists of 8 chapters which contain 93 articles regarding prevention, treatment and punishment in cases of sexual violence with perspective on victims (Angriani et al., 2023).

According to Nurmalasari (2022), The TPKS Law regulates two aspects which are included in it, namely the regulation of justice and the protection of victims so that law enforcement officials have legal standing to take action against perpetrators of wrongdoing and there is a separation of public interests from private interests so that sexual freedoms, sexual deviations and sexual abuses can be regulated in regulation.

In addition, according to Muhammad (2022), the construction of victims' rights as regulated in the TPKS Law provides guarantees of justice, legal certainty and reparation for victims of sexual violence which until recently did not have a strong legal basis. The existence of a reformulation of the regulation of sexual violence in Indonesia in the TPKS Law has become the basis for legitimacy for law enforcement and related parties in providing legal certainty, protection and restoration of the rights of victims of sexual violence (Hakim et al., 2020; Noer et al., 2021).

Law Number 12 of 2022 concerning Sexual Violence (TPKS Law), which was passed almost two years ago, breathes new life after efforts made by various parties to raise the issue of sexual violence to the parliamentary level for years. Although the enactment of the TPKS Law as a law is a significant step, its implementation has not yet been fully realized. This is primarily due to the absence of derivative regulations governing the prevention, handling, and restoration of the rights of trafficking victims (Bentivegna & Patalay, 2022; Logie et al., 2023).

The key definitions of core analysis are study deepening, hyolistic futuristic vision and preparation, and the purpose of using the results of the analysis as an active pieriencaan basis for the future. Furthermore, McDiowiell (2009) emphasized that intielijien analysis is the term used to describe the quality of research and analysis practice. Emphasizes that core intelligence analysis is a term used to describe the type of intelligence and practice of analysis. Suppose all tiered intelligence activities are related to problem analysis so that predictions can be made. In that case, intelligence core analysis takes a tiered perspective, which aims to provide a type of analysis that is directly relevant to achieving strategic organizational, corporate and governmental objectives (Cheek et al., 2023; Mishori et al., 2023; Yemane & Sokkary, 2022).

According to Supono (2009), in data processing, intelligence must be conceptual and complement what is implied in the facts through tracing other sources. The process of data processing and presentation of intelligence products refers to the intelligence circle scheme, which is generally divided into four main elements, namely: (1) planning/directing, (2) collecting or extracting information, (3) analysis or processing and production of reports, and (4) policy making.

One of the main challenges the TPKS Law faces is the unavailability of derivative regulations that can provide a concrete basis for implementing this law in the field. This ambiguity can be felt more sharply in less accessible areas, where access to legal services and protection for victims can be more difficult.

In this context, intelligence analysis can identify and evaluate factors contributing to the delay in passing the Sexual Violence Crime Bill (TPKS) and the formation of derivative regulations. Given the increasing cases of sexual violence in Indonesia, the urgency to understand and address obstacles in the legislative process has become increasingly important.

Strategic intelligence analysis can help uncover the political, social, and cultural dynamics that influence decision-making processes at the government and parliamentary levels (Anwar, 2011). Through intelligence analysis, it is expected to identify the interests of certain groups, resistance from various parties, or lack of understanding about the issue of sexual violence that may slow down the legislative process.

Furthermore, the analysis also evaluated the impact of this delay on victims of sexual violence. Through an intelligence approach, researchers will examine how these delays impact the legal protection and support victims need. This includes understanding how these delays affect public perception and trust in the legal system, as well as the potential for an increase in cases of unreported violence due to a lack of legal protections.

METHODS

The research method used in this study is descriptive qualitative method. According to Creswell (2016), qualitative research explores and understands meaning in a number of individuals or groups of people derived from social problems. Qualitative research in general can be used for research on people's lives, history, behavior, concepts or phenomena, social problems, and others. One of the reasons why using a qualitative approach is the experience of researchers where this method can find and understand what is hidden behind phenomena that are sometimes difficult to understand.

This research uses literature studies as a basis for data collection. According to Creswell (2010), data collection through literature study and documentation by quoting and reading material obtained directly or indirectly from various literature sources related to selecting research topics and problems using the interrelationship of information categories. The use of literature studies in this study is used to assist researchers in understanding the conceptual framework of the research topic. Through literature review, researchers can identify relevant and potential data sources that can be used in research.

The data analysis techniques used in this study are Data analysis steps used by Miles and Huberman (1984). Miles and Huberman revealed that the steps in qualitative descriptive data analysis are as follows:

1. Data Collection
2. Data Reduction
3. Data Presentation
4. Conclusion Intake

The study also used triangulation of data sources and theories. The data that has been obtained completely is then checked for validity from various sources so that it can produce a basis for making conclusions. This technique is expected to fulfill the process of drawing conclusions. The combination of triangulation techniques is carried out simultaneously with activities in the field, so that researchers

can record accurately and purposefully. It is expected that the data that has been collected and obtained is feasible and appropriate for use.

RESULTS

Contestation surrounding the TPKS Law

Sexual violence in Indonesia is a serious problem that, in many cases, can be linked to a patriarchal culture that is still deeply rooted in society. Patriarchal cultures tend to give reinforcement to views that degrade women and perceive them as objects that can be manipulated. This mindset has led to an increase in rates of sexual violence, with a lack of respect for women's rights and adequate protections. Patriarchal cultures can also hinder efforts to combat sexual violence, as they often involve norms and values that reinforce gender inequality.

In early December 2023, there was a case of murder of 4 children by their biological father in Jagakarsa, South Jakarta. The suspect before killing his son reportedly also committed domestic violence against his wife. Furthermore, this case illustrates how cases of violence in Indonesia are still often ignored in the midst of patriarchal society. It also shows clearly that cases of violence have high urgency and should be taken seriously, because it is evident that its impact not only threatens the safety of his wife but also takes the lives of his children. According to UI Professor of Criminologist Adrianus Meliala (2023), this murder case could not have happened if the police responded well to reports of domestic violence committed by her husband. The police can see the condition of the husband at home and if there are indications that the reported in this case the husband is full of anger and endangers children, of course the incident of four children becoming victims can be prevented.

According to Komnas Perempuan Commissioner, Retty Ratnawati (2023), ideally the police should immediately separate the perpetrator from his family or anyone who is a potential victim. But unfortunately the police often do not understand because of lack of ability and will. Incomprehension among the wider community, especially the police, regarding the provisions contained in the TPKS Law. Inadequate training and counseling can be a contributing factor to a lack of understanding of the law

The Criminal Act on Sexual Kekerasan (TPKS) was first initiated by the Perempuan National Mission in 2012, due to the high rate of cixial kiekierasan in Indonesia. Initially, the TPKS Law was named the Draft Law on the Abolition of Sieksual Kiekierasan (RUU PKS) which was prepared in 2014. The PKS Bill was prepared through discussions with the facts and tieiori sierta was discussed for the first time in 2016 in the House of Representatives. In that year, the PKS Bill was approved as one of the Priograms of Liegislasi Prioritas DPR. On April 6, 2017, the PKS Bill was approved by the House of Representatives and discussed at the plenary meeting of the VII Mission of the House of Representatives of the Republic of Indonesia

During the process of the PKS Bill, the Prosperous Justice Party (PKS) faction presented resistance that lasted until the time when the TPKS Bill was finally passed as law. In addition, the PKS Party also criticized the content of the academic text of the bill that discusses sexual violence based on different sexual orientations. They also oppose articles relating to forced abortion and forced marriage.

The reason why the F-PKS refused to enact the TPKS Bill as an initiative was because the tier draft did not include criminal acts of immorality in a comprehensive manner, which included sexual irregularity, adultery, and sexual deviation.

F-PKS has also proposed that the TPKS Bill should be adjusted to the RKUHP, especially about the norms prohibiting adultery and sexual deviation. The regulation of the Crime of Adultery can be expanded and the scope of the adultery rules that have been regulated in article 284 of the Criminal Code, by adding information that adultery is committed between a man and a woman, whether married or not.

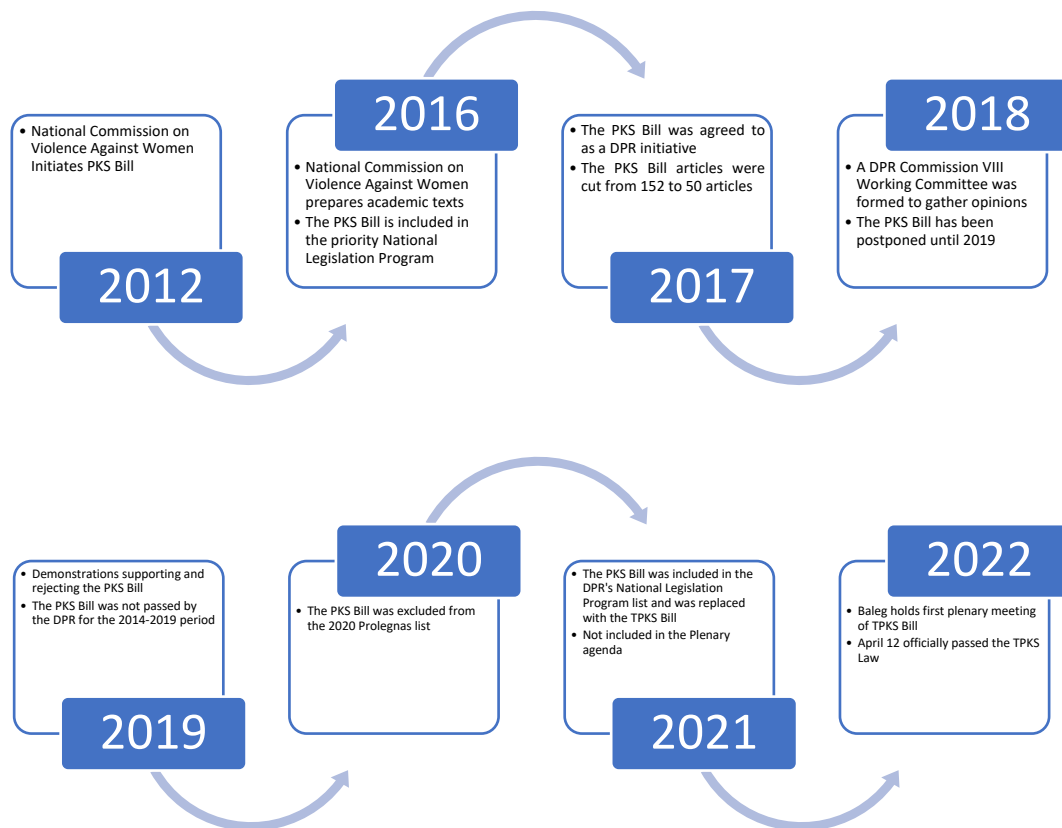


Figure 1. Timeline of TPKS Law

From the timeline of the TPKS Law, it can be seen that in the 10 years of its formation process, the TPKS Law has experienced various obstacles. In the 2019-2024 period, the PKS Bill is included in the Priority National Legislation Program. However, in the discussion of the 2020 priority Prolegnas, the PKS Bill was withdrawn for reasons of difficult discussion.

According to the Chairman of Commission VIII of the House of Representatives of the Republic of Indonesia, Yandri Susanto (2018), discussing the PKS Bill is difficult because of sharp differences between factions that reject or support. This is because many sensitive points are discussed about sexual orientation and LGBT. In analysing the slow formation of the Sexual Violence Law (TPKS Law), pluralism theory is relevant when looking at the dynamics involving the formation of derivative rules of the TPKS Law. The debate surrounding the TPKS Bill illustrates significant differences of opinion among the parties involved. The Prosperous Justice Party (PKS) faction, as one of the main players in the legislative process, put forward a resistance that lasted for several stages, creating a dynamic plurality of views regarding the bill's content. This faction shows that the plurality of views is not only limited to policy aspects, but also includes certain ideological dimensions and values that intersect with the issue of sexual violence.

In the context of the failure of strategic intelligence revealed by Kruys (2006), the concept of strategic intelligence analysis has not been used to map conflicts and actors in the policy formulation process, so it is unable to consolidate data, equalize terminology and perceptions between contesting parties. In addition, the incomprehension and differences of views between the factions in the process of discussing the TPKS Bill also reflect failures. Factions that hold different views on sexual orientation and other aspects of the TPKS Bill show a lack of understanding and understanding at the legislative level.

This has led to slow ratification and many obstacles in the implementation of the TPKS Law. Some important aspects need to be considered. First, there is a failure in public understanding and response, especially law enforcement officials, to cases of sexual violence. The case of the murder of a

child by his biological father is a clear example of how police officers are less able to respond well to reports of domestic violence cases. The lack of ability and understanding among the community, especially the police, regarding the provisions of the TPKS Law indicates intelligence failure in mapping the challenges of implementing the TPKS Law, including providing adequate training and understanding.

Furthermore, in addition to the slow process of passing the TPKS Law itself, the failure can also be seen from the slow formation of derivative rules that support it. Although the trafficking law was passed nearly two years ago, derivative rules that were supposed to guide victim prevention, handling, and recovery were still not available. This results in confusion and difficulties in handling sexual violence cases.

Judging from the strategic intelligence analysis, the failure was also seen in the lack of socialization and technical guidelines needed after the TPKS Law was passed. The government has not shown seriousness in providing guidelines and rules for implementing the TPKS Law, which has resulted in confusion among law enforcement officials and difficulties in making the TPKS Law a reference in handling sexual violence cases.

Head of *Komnas Perempuan* Andy Yentriyani (2023), said that implementing the TPKS Law would be slightly hampered due to the slow formation of derivative regulations. Assistant Deputy also agreed with this for Women's Services for Victims of Violence at the Ministry of PPPA, Margareth Robin Korwa (2023), who said that the derivative rules were still being discussed across ministries of institutions. Previously, 5 Government Regulations and 5 Presidential Regulations would be made as mandates from the TPKS Law. However, the Government agreed to simplify the formation of derivative rules into 3 Government Regulations and 4 Presidential Regulations. The five derivative regulations initiated by the Ministry of PPPA are as follows:

1. RPP on Prevention of Trafficking and Handling, Protection, and Recovery of Trafficking Victims;
2. RPP on Coordination and Monitoring of the Implementation of Prevention and Handling of Trafficking Victims;
3. RPerpres on the Implementation of Integrated Services in Handling, Protection, and Recovery at the Center;
4. RPerpres on the Technical Implementation Unit of the Women and Children Protection Area; and
5. RPerpres National Policy on the Eradication of TPKS.

Meanwhile, Baleg, Member of the House of Representatives of the Republic of Indonesia, Luluk Nur Hamidah (2023), said the government has not shown its seriousness after promulgating the TPKS Law. Luluk also questioned socialization and technical guidelines when the government has not issued regulations derived from the TPKS Law. This will confuse the field for law enforcement officials in making the TPKS Law a reference for handling sexual violence cases.

According to the Civil Society Network for the Guardian of the Sexual Violence Law at an online press conference on Monday, November 27, 2023, the law's implementation often faces obstacles due to the absence of derivative regulations that support it. Activists who are members of the Civil Society Network said that there are several records related to difficulties in overcoming cases of sexual violence, obtained from the experiences of victim advocates and activists active in various regions.

Furthermore, the process of forming derivative rules faces new challenges, namely discussions across ministries and institutions that can show the complexity and diversity of interests in government. Different ministries and agencies have different duties and responsibilities, and each can have different perspectives on implementing the TPKS Law. Coordination among them becomes key to harmonizing different views and ensuring that the resulting derivative rules reflect common needs and goals.

In the context of pluralism theory, the slow formation of derived rules can be understood as the result of negotiations and compromises between different groups and institutions. This process requires discussion and negotiation at the legislative level and involves executive actors who have an

important role in shaping the derivative regulations. The difficulty of reaching a comprehensive agreement illustrates a complex plurality of views and interests in society and government.

The Threat of Vulnerability Due to the Slow Formation of the TPKS Law and the Absence of Derivative Rules

In various regions in Indonesia, obstacles and obstacles in implementing the Sexual Violence Crime Law (TPKS Law) have become problems that arise. For example, in North Sulawesi and East Nusa Tenggara (NTT), law enforcement officials (APH) do not fully understand the substance of the TPKS Law, with a focus more inclined to applying punishment to perpetrators. Some cases, especially those involving children, use the Child Protection Law because the punishment is more severe than the TPKS Law.

On the other hand, APH's concerns regarding the refusal of the Prosecutor's Office made them reluctant to use the rules derived from the TPKS Law. In addition, patriarchal culture, social stigma, and fear of people's views regarding sexual violence cases are additional factors that complicate the situation. Rena stated that the incomprehension of law enforcement officials and the lack of public awareness in protecting and recovering victims also added to the complexity of implementing the TPKS Law in these areas.

Meanwhile, in Kalimantan and Papua, customary and religious mechanisms are still often used in resolving trafficking cases, resulting in negative impacts on victims due to patriarchy and stigma. In Malang Raya, some investigators are still reluctant to use the TPKS Law, even transferring cases to police stations that apply other laws. In Aceh, the implementation of services to fulfil the rights of victims of sexual harassment and violence is still faced with challenges because it still follows Qanun No.9 of 2019 concerning the Implementation of Handling Violence against Women and Children.

Moving to Central Java and Kupang City, East Nusa Tenggara (NTT), police investigators still do not understand the elements contained in the TPKS Law. In fact, a month after the passing of the TPKS Law, there are still investigators who do not know the existence of the law. Investigators in this area still need additional evidence to strengthen the element of sexual violence, as stipulated in Article 6 of the TPKS Law.

Recommendations and Opportunities for Future Improvement

The urgent need for training and socialization becomes very important in this context. Comprehensive training on the trafficking law, covering legal aspects and sensitivity to victims, is necessary to ensure effective case handling. In addition, the provision of adequate resources, including human resources, budget, and facilities, is essential to support APH and related institutions in managing sexual violence cases.

In addition, public awareness campaigns also need to be promoted to reduce social stigma against victims and support effective law implementation. This campaign can help increase public understanding of the impact of sexual violence and the importance of the TPKS Law in protecting victims.

The government must have an ongoing monitoring and evaluation mechanism. This mechanism aims to ensure that the TPKS Law and its derivative regulations are implemented effectively, including monitoring APH performance, evaluating the effectiveness of the training provided, and reviewing the suitability of the resources provided. With this comprehensive approach, it is hoped that implementing the TPKS Law can be more effective, provide better protection for victims, and strengthen the justice system in Indonesia.

In addition to weaknesses in the regulatory framework that can strengthen its implementation, the lack of coordination among various agencies such as relevant Ministries/Agencies, law enforcement agencies, the Regional Technical Implementation Unit for Women and Children Protection (UPTD PPA), local governments, and other relevant institutions, is also one of the significant challenges in overseeing the implementation of the regulation. Therefore, more intensive efforts are needed to improve coordination between relevant institutions, including Ministries/Agencies, law enforcement agencies,

UPTD PPA, local governments, and other related institutions. Good coordination will ensure the implementation of the TPKS Law runs more effectively.

This problem is further exacerbated by a shortage of supporting human resources, including disability advocates, lawyers, medical personnel, psychologists, psychiatrists, and sign language interpreters. Not only that, aspects such as budget allocation and availability of shelter facilities also demand more intensive attention. Therefore, the Government needs to provide adequate resources, including human resources, budget, and facilities, to support APH and related institutions in managing cases of sexual violence.

CONCLUSION

This research shows that the legislative process of the TPKS Law faced debate and resistance, especially from PKS factions, NGOs, and other community groups. The failure to use strategic intelligence analysis in establishing the TPKS Law led to the inability to map conflicts and actors and consolidate contesting parties. Delays in policy formation led to slow passage of the TPKS Bill and a large state financial burden.

The rejection at the time of the bill's formation did not warn policymakers to map legislative and non-legislative challenges. This failure puts an additional burden financially and psychologically, especially on victims of sexual violence who feel neglected. Forming the TPKS Law can potentially create social conflicts and disintegration and disrupt sociocultural resilience.

Although the TPKS Law has been passed, its implementation has been hampered by the slow formation of derivative regulations and a lack of coordination between relevant institutions. Shortages of human resources, budgets, shelter facilities, and protection for victims are major obstacles. Resolving cases does not always comply with the provisions, indicating uncertainty in the judicial system.

In conclusion, the importance of strategic intelligence analysis in policy formulation is proven, as it can map conflicts, identify vulnerabilities, and provide recommendations for stakeholders. Insufficient coordination among relevant agencies indicates failure of strategic intelligence analysis, and improved coordination is needed to ensure effective implementation of the TPKS Law.

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