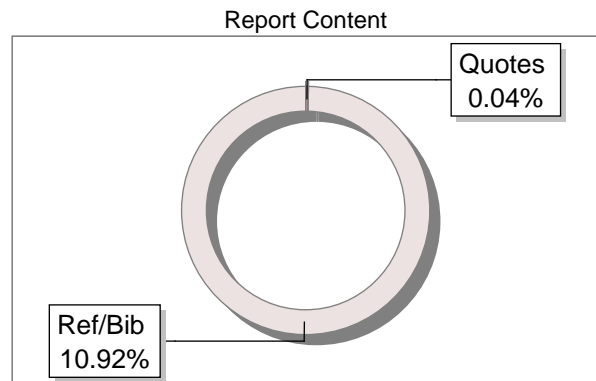
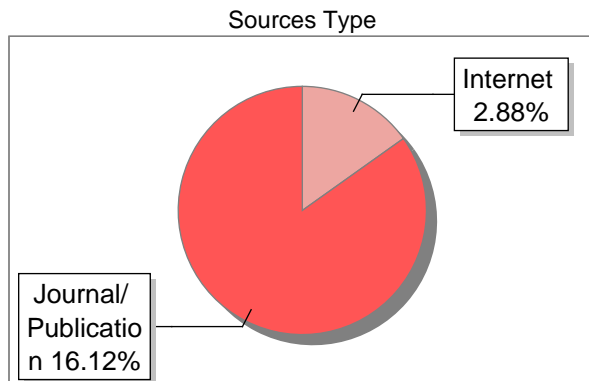
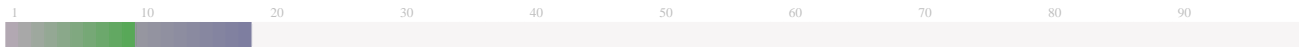


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## LEGAL RESPONSES AND CHALLENGES IN ADDRESSING SEXUAL VIOLENCE IN CONTEMPORARY INDONESIAN SOCIETY: A FOCUS ON POLICY GAPS AND VICTIM PROTECTION

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56

### ABSTRACT

*This study critically examines Indonesia's high rate of sexual violence in relation to modern law. Despite legal efforts, the issue remains alarming. Using a juridical-empirical approach and qualitative-critical-descriptive analysis.*

*The study finds that crime and punishment are rooted in social philosophy. The liberalization of sexual behavior based on consent weakens social, customary, and religious norms, creating a criminogenic environment. This trend is seen in modern countries. Indonesia's Law Number 12 of 2022 on Sexual Violence Crimes legalizes consensual relations, ignoring customary and religious laws, which fosters a criminogenic atmosphere. Strengthening cultural and religious values is a strategic solution to combat this growing crisis. Sexual violence, often committed by close individuals such as boyfriends, is prevalent in educational institutions, including religious ones. The actual rate of sexual violence is much higher than reported, highlighting the urgent need for effective intervention and cultural reinforcement to address this escalating issue.*

**Keyword : Critical, Study, Sexual, Indonesian, Law.**

### INTRODUCTION

The reality of sexual violence is very worrying, not only showing an increase of 38.21% compared to 2022 which was 25.70% of the total number of violence against women, but it has occurred in religious educational institutions (Komnas Perempuan, 2023). The situation of violence against women reaffirms the existence of an emergency. Although Law No. 12 of 2022 has been issued with various types of sexual violence crimes and quite high criminal sanctions, sexual violence has increased. The incidents in Bandung with

convict Herry Wirawan and Jombang with convict M. Subchi which occurred in religious educational institutions increased the level of emergency. Educational institutions, especially religious education with a background in Islamic boarding schools, are expected to be a bulwark against sexual violence in society. Sudarto said that Karang Taruna and religious educational institutions are non-penal efforts to overcome crime (Barda Nawawi Arief, 2010, p. 46.). This non-penal response was studied by Muklas (Muklas, 2022, pp. 226-238). Sabar Selamat studied it

from a penal approach based on the Criminal Code, RKUHP (Sabar Slamet, 2015, pp. 475-487). Nurul Isnina also studied the response to sexual violence from normative provisions, namely based on the RKUHP (Nurul Isnina, 2021, pp. 45-56). Aji Lukman Ibrahim examines penal and non-penal efforts against sexual violence. (Aji Lukman Ibrahim, 2022, p.538-557). The study places the aspects of legal substance and legal institutions that regulate and overcome sexual violence as not being questioned when sexual violence is at an emergency level. This study critically explains that legal regulations that are constructed that are not in accordance with the moral, cultural and religious values of society actually have an impact on criminogenic factors.

Legal development that includes aspects of legislation (legal substance), aspects of implementing apparatus (legal structure), and aspects of public legal awareness (legal culture) has been carried out. Law No. 12 of 2022 concerning Criminal Acts of Violence has been enacted and is the legal basis for preventing and overcoming sexual violence. At the legal structure level, there are various legal institutions such as the Indonesian Child Protection Commission and the National Commission on Women, and various institutions for empowering women and children in the central, provincial and district/city governments. At the legal culture level, there are various community organizations that protect and advance Indonesian women and children. The existence of this sexual violence emergency in Indonesian society today is a sign of modernization.

Legal development in modern society has been implemented through

the modernization of the regulation of legal norms in the form of written laws as a characteristic of modern law. The demand for legal certainty as required by modern law has been implemented. The need for state institutions outside government institutions to protect and advance women and children has been realized, especially since modern law also creates a legal society that protects human rights including the rights of women and children. Modern law that has the dimension of protecting and advancing human rights has been accommodated. The freedom of society to associate and express opinions in protecting and advancing the rights of Indonesian women and children shows that modern Indonesian law is democratic and has a human rights dimension. Various non-governmental organizations at the central, provincial and district/city levels that protect, fight for and advance the rights of Indonesian women and children have been established and operate for the protection and advancement of the rights of Indonesian women and children. The development of modern law that includes aspects of legal substance, legal institutional aspects and legal culture aspects takes place simultaneously with the increase in sexual violence which shows the level of emergency of sexual violence. It is very concerning that sexual violence also occurs in Islamic boarding schools as committed by the caretaker of an Islamic boarding school in Bandung on behalf of the convict Herry Wirawan (Safik Faozi, 2022), and M Subkhi in Jombang (Safik Faozi, 2023). This study explains the phenomenon of sexual violence occurring and increasing in a society undergoing modernization.

40 The increase in sexual violence can be understood when the ongoing legal development ignores moral and religious values (UN Congress Report, Sixth, pp. 42, and 54.). This neglect has weakened traditional social ties and damaged indigenous cultural identities. This factor has been stated as a criminogenic factor (UN Congress Report, Eight-1990, p. 3). The weakening or destruction of social ties built on traditional norms and values by modern law with liberal values. Liberal values enforced through legislation have the potential to be inconsistent with moral and religious values. This inconsistency can be a factor causing crime. This has been recommended in the 6th UN Congress in 1980, namely 13 the importation of foreign cultural patterns which did not harmonize with the 42 indigenous culture had had a criminogenic effect (Sixth Congress, hal. 42). The conducive factors for the occurrence of crimes that have damaged the identity of the original culture were also re-emphasized in the 8th UN Congress in 1990 (8th UN Congress, 1990, p. 42). Likewise, 28 sexual behavior 29 patterns that are not in accordance with local wisdom that is full of cultural and religious values. This free sexual behavior without norms has caused behavioral deviations and is criminogenic. The increase in sexual violence in 2022 is a social reality that occurs in Indonesian society which is experiencing modernization. This critical study is more than just a critical study by Sheila Maulida Fitri which questions the existence of duplication in the material criminal law aspect, especially regarding the classification of types of crimes that fall into the category of sexual violence (Fitri, 2021).

## MAIN PROBLEMS

1. How is a critical study of law in modern Indonesian society? 17
2. How is a critical study of the social reality of sexual violence that occurs in Indonesian society today? 17

## RESEARCH METHOD

The proposed research method is a critical study of the implementation of Satjipto Rahardjo's modern law. This critical study begins by identifying laws in modern society that must be written in 10 the form of laws that are free from cultural and religious norms, and are designed to guarantee individual freedom, not to realize social justice. The critical study explains that the implementation of Law 4 No. 12 of 2022 concerning Criminal Acts of Sexual Violence 17 does not correlate with a decrease in the number of violence but rather indicates an emergency of sexual violence. I.S. Susanto's critical study explains that the 51 crime statistics presented are only those that are reported, not the actual number of violence. Furthermore, critical analysis is also based on the idea that development that is not based on morality and community culture is criminogenic. Strategic efforts in the form of eliminating legal development that weakens cultural and religious norms and values that regulate sexual behavior. This means that there is a strengthening of these norms. With a critical analysis, Werner Manski can explain the existence of pluralism of legal norms originating from the state, customary law, and religious law that live in Indonesian society.

## RESEARCH RESULT AND DISCUSSION

### 1. A Critical Study of Law in Modern Indonesian Society

Modern Indonesian society is identified as an industrial society. Industrial society in the information technology era is characterized by the convergence of industrial growth on one side and the development of information technology. The growth of this modern industrial society shows that the values of liberalization and individualization increasingly underlie human and social behavior. An industrial society that demands certainty of land, investment, availability of goods and services, and legal certainty through legal products. In Satjipto Rahardjo's view, the combination of technology, industrialization, and capitalism drives the economy to become aggressive with the characteristics of hunger and thirst everywhere. The presence of a modern state with its modern law is the right answer and desired by capitalist industrialization. (Satjipto, 2000, p. 6) Satjipto Rahardjo is of the opinion that modern law has characteristics, namely its written form, the law applies to the entire community, and the law is an instrument that is used consciously to realize political decisions (Satjipto, 2000, pp. 214). The victory of capital owners to liberalize religious power is a sign of a modern state with modern law. Satjipto Rahardjo considered this value of freedom to be a paradigm in its legal system. Liberal modern law is designed to provide protection for individual freedom. Furthermore, it is stated that the legal system is not established to provide social justice, but rather to protect individual freedom. (Satjipto, 2000, p. 7)

The understanding of individualization and liberalization underlies the behavior of society. Consequently, legal norms that limit individual freedom are liberalized from the doctrines of social, moral and religious norms adopted by society. The implementation of the Criminal Code, Civil Code, Commercial Code and other laws inherited from the colonial government show the character of liberalistic-capitalist law. Its written nature, universally applicable, centralistic, formal-procedural supported by repressive and authoritarian power shows its modern law. This character of modern law continues, even though Indonesian society has experienced revolutionary momentum, namely when it became independent until the New Order regime ended. Satjipto states that modern law also has a destructive type, namely the use of social techniques that cause widespread social losses. Legal sanctions contain the destruction (disintegration) of social ties and create an atmosphere of widespread social nihilism (Warassih, 1999, p. 10). All social norms, habits and customs that exist in agrarian society are damaged after being replaced by a culture oriented towards manufacturing and urban areas (Fukuyama, 1999, pp. 4-5).

Modern society with the rapid development of information technology has also faded social cooperation. In Joseph Schumpeter's view, 'creative destruction' has caused equally great damage in the world of social cooperation (Fukuyama, 1999, p. 6). The destruction of social ties has become one of the causes of crime in society, as stated in the 7th UN Congress in 1985. This is because the ongoing development ignores cultural and moral

values. (UN Congress Report, 1981, pp. 42-54). Criminogenic factors occur when liberal values that apply massively in modern society do not correspond to local wisdom values embedded in social norms that live in society. It was stated in the 6th Congress that the importation of foreign culture patterns which did not harmonize with the indigenous culture had a criminogenic effect (Sixth Congress, p. 42). Conducive factors to the occurrence of crime that have damaged the identity of the original culture were also emphasized again in the 8th UN Congress in 1990 (8th UN Congress, 1990, p. 42). The behavior of a society that frees itself from social norms makes the behavior of a society that is uprooted from its social roots which are full of religious cultural values.

Sexual behavior that is limited by religious cultural values is constructed by law on the basis of pragmatic values, namely sexual relations based on the voluntary consent of the parties. Francis Fukuyama argues that the liberation of the individual from unnecessary and stifling social constraints. *Since the 1960s, the west has experienced a series of liberation movement that have sought to free individuals from the constraints of many traditional social norms and moral rules. These sexual revolution, the women's liberation and feminist movements and the movements in favor of gay and lesbian rights have exploded throughout the Western World. The Liberation each one of these movements seek concerns social rules, norms, and laws that unduly restrict the option and opportunities of individual-whether of young people choosing sexual partners, women seeking career opportunities, or gay seeking recognition of their rights.* (Fukuyama, 1999,

p.13).As a result, this social condition has an impact on increasing crime, the destruction of families, parents failing to instill obligations in their children, neighbors not caring for each other, and citizens choosing to leave public life.

The increase in the number of crimes that occur in modern society also occurs in sexual violence, when moral, social, cultural and religious values adopted by Indonesian society are marginalized by legal norms that are built on the basis of individual freedom including the freedom to have sexual relations on a voluntary basis. The values of local wisdom built by culture and religion are considered to have limited individual freedom to have sexual relations freely.

## 2. A Critical Study of Social Reality of Sexual Violence Occurring in Modern Indonesian Society

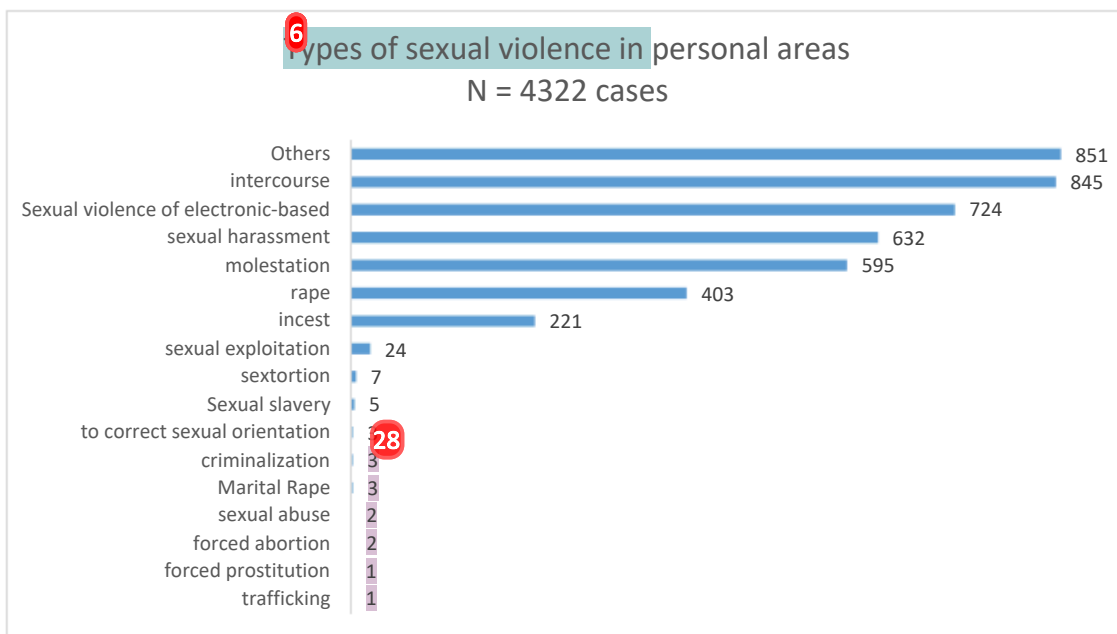
Sexual violence formulated in Law No. 12 of 2022 is known as the term criminal act of sexual violence. The law does not formulate the definition of criminal acts of sexual violence, except as stated in Article 1 number 1, namely all acts that fulfill the elements of a criminal act as regulated in this Law and other acts of sexual violence as regulated in the Law as long as they are determined in this Law. This Law defines several types, namely as determined in Article 4 paragraph (1), namely paragraph (1) states that Criminal Acts of Sexual Violence consist of:

- a. non-physical sexual harassment;
- b. physical sexual harassment;
- c. forced contraception;
- d. forced sterilization;
- e. forced marriage;
- f. sexual torture;
- g. sexual exploitation;

- h. sexual slavery; and
  - i. electronic-based sexual violence.
- It turns out that the definition of sexual violence crimes also includes as stipulated in Article 4 paragraph (2) Sexual Violence Crimes also include:
- a. rape;
  - b. indecent acts;
  - c. sexual intercourse with a child, indecent acts against a child, and/or sexual exploitation of a child;
  - d. acts that violate morality that are contrary to the will of the victim;
  - e. pornography involving children or pornography that explicitly contains violence and sexual exploitation;
  - f. forced prostitution;
  - g. human trafficking crimes aimed at sexual exploitation;
  - h. sexual violence within the scope of the household;
  - i. money laundering crimes whose original crime is a Sexual Violence Crime; and
  - j. other crimes that are expressly stated as Sexual Violence Crimes as regulated in the provisions of laws and regulations.

Explanation of Article 8 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence defines sexual violence as any act in the form of forcing sexual relations against one person within the scope of their household with another person for commercial purposes and/or certain purposes. Based on experience in dealing with victims of sexual violence, the National Commission on Violence Against Women defines sexual violence as any

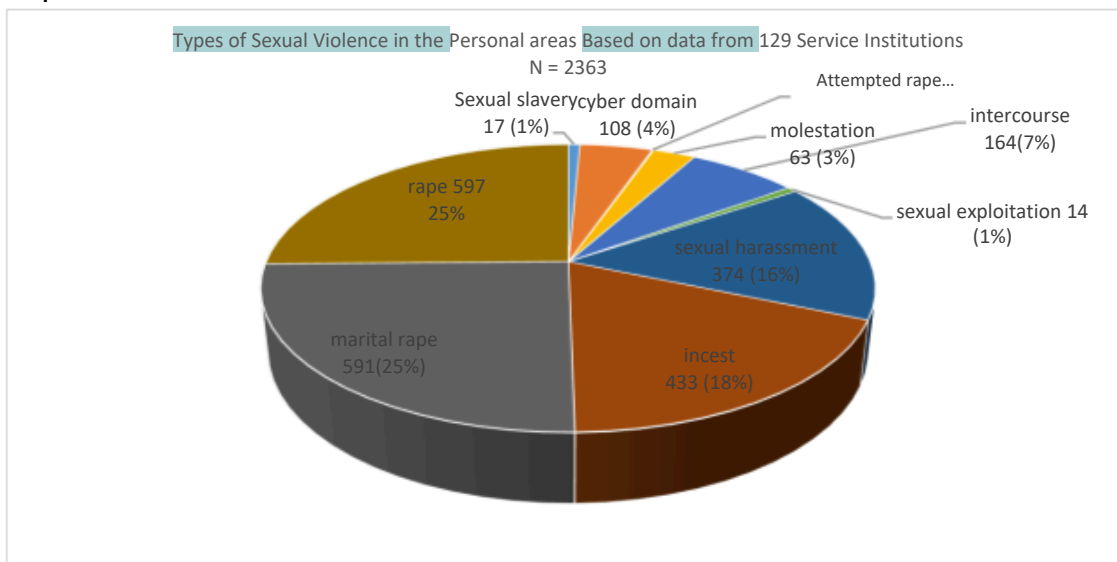
act of degrading and/or attacking a person's body, sexual desires, and/or reproductive function, by exploiting a person's vulnerability, inequality, or dependency based on gender which may be accompanied by other social statuses, which result in or may result in physical, psychological, sexual suffering or misery, economic, social, cultural, and/or political losses. In the view of the National Commission on Violence Against Women, although this definition is not used in the TPKS Law, its components are adopted in the formulation of the crime of sexual violence. (Catahu, 2023, pp. 45-46). In modern society with the development of information technology, sexual violence occurs not only from physical meetings between the perpetrator and the victim, but there is a reality of sexual violence that occurs with the help of the internet. In electronic-based sexual violence, the most frequently reported are threats or acts of spreading photos/videos containing sexual content in which the victim is in it and sending pornographic photos/videos that are not desired by the victim. The sexual content is then used as a control tool by the Perpetrator to subdue the Victim (Catahu, 2023, p. 46). The portrait of sexual violence that occurs in society can be grouped into sexual violence in the personal sphere, in the public sphere and in the state sphere. The portrait of sexual violence in the personal sphere based on data from the National Commission on Violence Against Women and Service Institutions is as follows :



Source : Annual Record of Komnas Perempuan Republik Indonesia 2023 and translated into English

Based on the complaint data, the most common cases are sexual intercourse (845), electronic-based sexual violence (724), sexual harassment (632),

molestation (595), rape (403), and incest (221). When compared to 2021, sexual violence recorded in the Service Institution is as follows



Source : Annual Record of Komnas Perempuan Republik Indonesia 2023

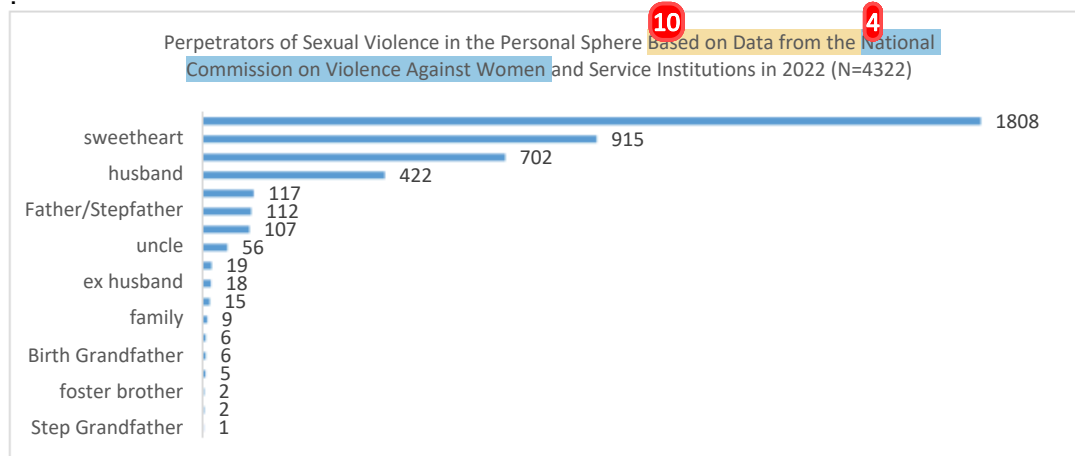
Based on the image, there were 597 cases of rape (25%), then marital rape or

sexual violence in marriage 591 cases (25%), incest 433 cases (18%), and

sexual harassment 374 cases (16%).  
The elements of perpetrators of sexual

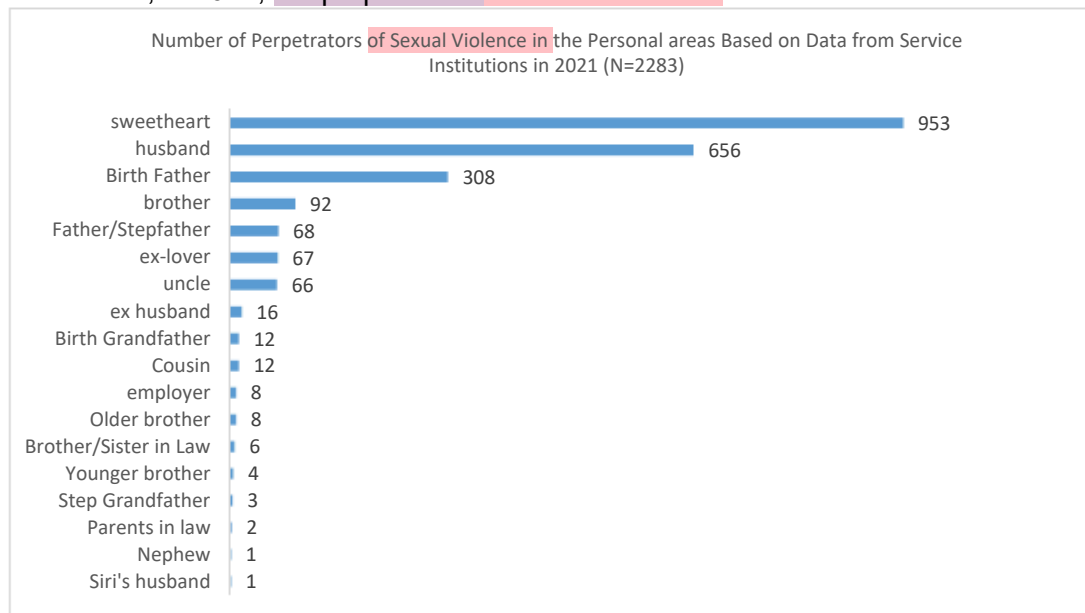
violence that occurred in 2022 are as follows

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Source : Annual Record of Komnas Perempuan Republik Indonesia 2023 and translated into English

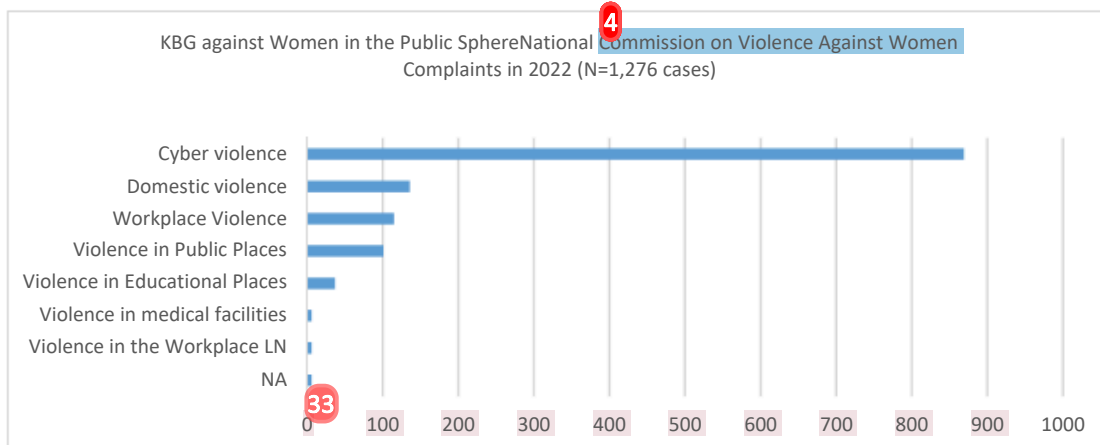
Meanwhile, in 2021, the perpetrators of sexual violence were as follows:



Source : Annual Record of Komnas Perempuan Republik Indonesia 2022 and translated into English

Based on the data, the highest perpetrators of sexual violence in 2021 and 2022 were boyfriends. In 2021, the perpetrators came from husbands at 656, followed by fathers at 308. In 2022, ex-boyfriends were in second place at 702, followed by husbands at 422.

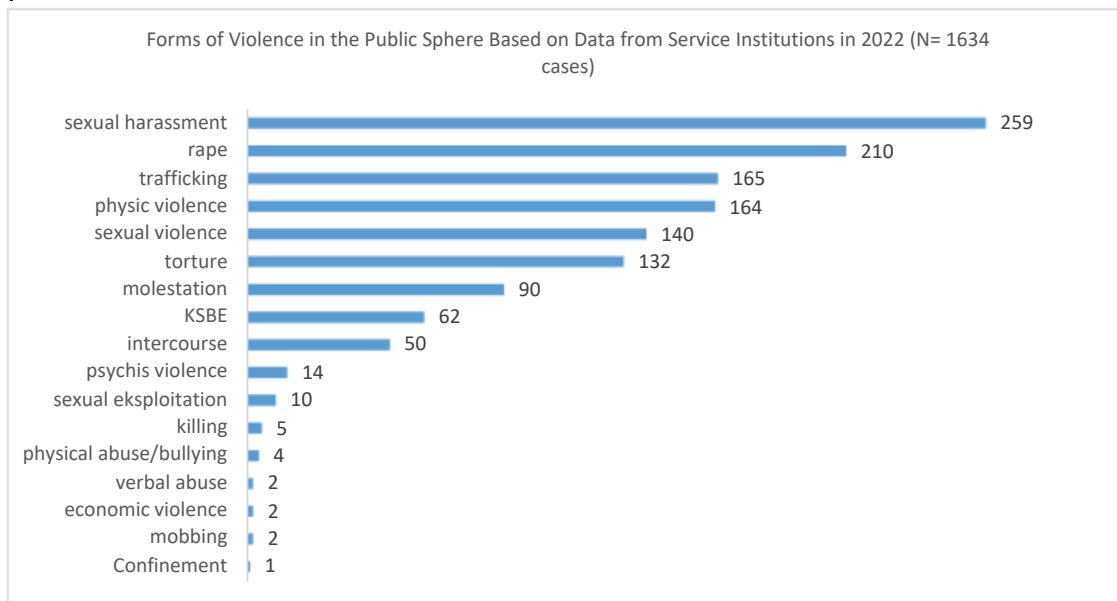
Perpetrators from biological fathers in 2022 were 117. Based on library data, violence in the public sphere from complaint report data at the National Commission on Violence Against Women is as follows:



Source : Annual Record of Komnas Perempuan Republik Indonesia 2023 and translated into English

In modern society with the development of information technology, violence in cyberspace is a social reality and shows the highest ranking of 869, followed by at home (136), at work (115), in public places (101). In cyberspace, sexual violence is manifested in the form of being sent or shown photos/videos, taking photos/videos, spreading pornographic photos/videos, being asked for VCS, being asked to send :

photos/videos and threats to spread photos/videos. This shows that sexual violence is developing and complex with the facilitation of technology, communication and information. While for sexual violence in offline space, sexual violence is manifested in the form of rape and sexual harassment. The forms of sexual violence that occur in the public domain based on data from the Service Institution are as follows

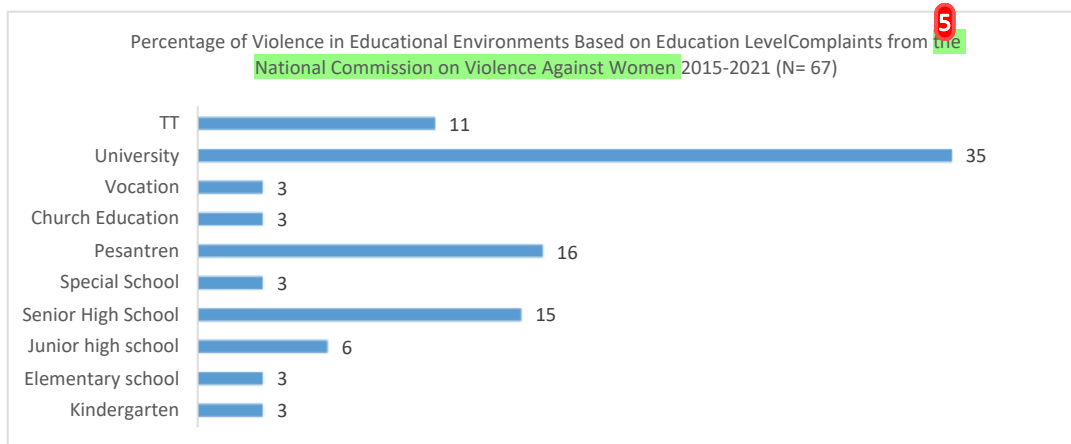


Source : Annual Record of Komnas Perempuan Republik Indonesia 2023 and translated into English

Based on these data, sexual harassment is the highest type of violence in the public sphere, namely 259, followed by rape 210, sexual violence totaling 140.

Based on secondary data, sexual violence that is very concerning occurs in educational institutions. The existence of the Regulation of the Minister of Education, Culture, Research, and Technology of the Republic of Indonesia Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education Environments indicates that there has been some sexual violence in educational institutions. Likewise with sexual violence in Islamic boarding school educational institutions as happened to convicts Herry Wirawan in Bandung, and M. Subchi in Jombang. The perpetrators as caretakers of Islamic boarding schools used certain teachings that were misused to smooth over the sexual violence that was committed (Safik Faozi, 2023) Throughout 2022, 8 (eight) complaints of cases of sexual violence in educational environments were recorded by the National Commission on Violence Against Women. These cases occurred in general and religious education environments, and from elementary,

secondary to tertiary education levels. The distribution of cases includes Padang Lawas, Yogyakarta, Surabaya, Tuban, and Ambon (Catahu Komnas Perempuan, 2023, p. 65). In religious educational institutions, Komnas Perempuan received a case of sexual violence committed by a Pastor and Church Leader in West Java. The perpetrator committed sexual harassment by means of vaginal sanctification and applying "anointing oil" that had been prayed for. The victim was prohibited from refusing this ritual because the perpetrator promised a good life for the victim and her children because they had obeyed God's commandments (Catahu Komnas Perempuan, 2023, p. 67). The forms of sexual violence in educational institutions recorded in the 2023 Annual Report of Komnas Perempuan include molestation, rape, verbal harassment, and criminalization (Catahu Komnas Perempuan, 2023, p. 65-66). Based on complaints to the National Commission on Violence Against Women, which are stated in the 2022 Notes, sexual violence in the PT environment was the highest since 2017-2021, namely 35, Islamic boarding schools 16 and high schools 15, as presented below:



Source : Annual Record of Komnas Perempuan Republik Indonesia 2023 and translated into English

Sources from the Ministry of Education, Culture, Research, Technology and Higher Education stated that sexual violence in higher education institutions has shown a sexual violence emergency as shown in the image below.:

Number of cases of sexual violence in higher education by the Ministry of Education, Culture, Research and Technology in 2021:

- we are in a state of emergency regarding sexual violence in the university environment.
- 40% of 304 students at a state university have experienced sexual violence (ardi & Muis, 2014)
- Sexual violence occurs at all levels of education. 27% of all complaints received by the National Commission on Violence Against Women occurred at universities.(2015-2020)
- 92% of 162 respondents experienced online gender-based violence (GBV)
- Based on 174 testimonies from 79 campuses in 29 cities:

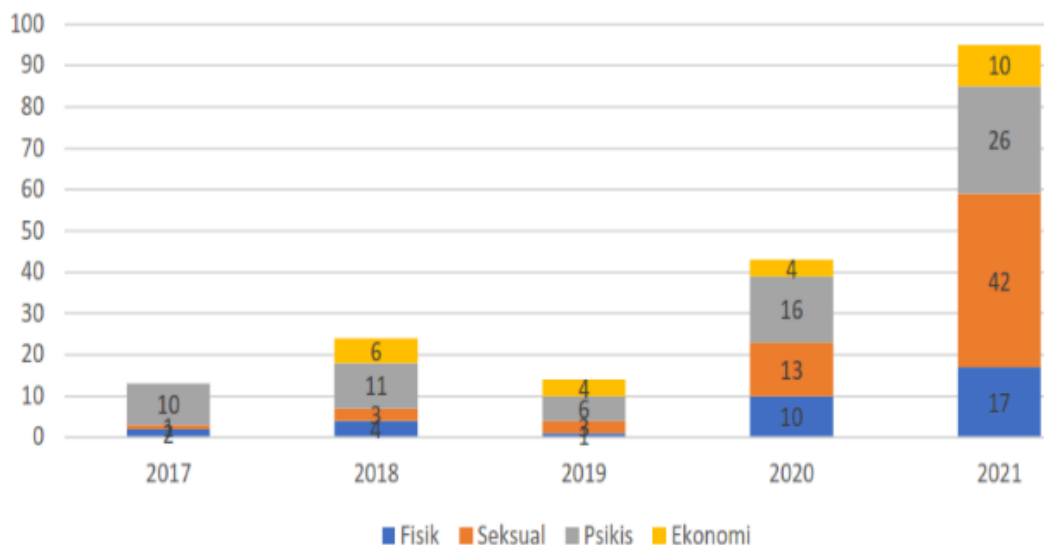
- a. Violence occurred in the campus environment, internships, lecturers' houses, online and off campus (tirta.id. 2019)
- b. 172 students, 1 lecturer and 1 staff became victims
- c. 89% of victims were women, 4% were men, and 8% did not want to mention.
  - 77% of lecturers stated that "sexual violence had occurred on campus, and 63% of them did not report cases they knew about to the campus (survei Ditjen Dikristek, 2020)
  - YLBHI Bali: The Majority of Sexual Violence Cases Against Women Occurred in Campus Environments

The emergency data on sexual violence in educational institutions adds to the concern when it also occurs in religious educational institutions, as has happened in several Islamic boarding schools, which were carried out by caregivers against their female students. This worrying phenomenon requires critical awareness to be built in the campus environment. Critical awareness

plays a major role in dealing with the issue of sexual violence in higher education. To address sexual violence, higher education institutions must promote critical awareness among students and academics, create pro-victim discourse and support student agency, and most importantly, strive to foster a gender equality perspective among campus leaders. (Fitri, 2021)

Sexual violence in the state sphere is carried out by state officials

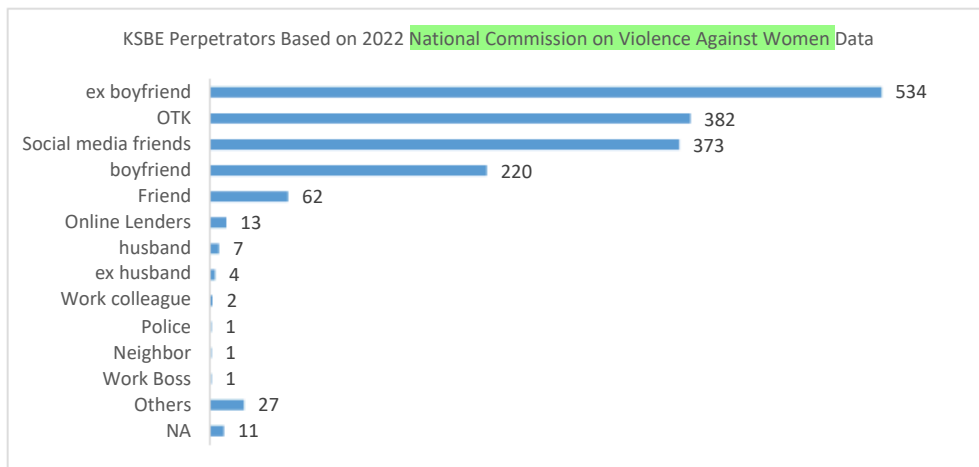
against female citizens. State officials are obliged to protect, respect and advance women's rights as mandated by Article 28 I paragraph (4) of the 1945 Constitution, namely Protection, advancement, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. 2022 Notes The National Commission on Violence Against Women noted that sexual violence during 2017-2021 was as follows:



Source : Annual Record of Komnas Perempuan Republik Indonesia 2022 and translated into English

Based on these data, sexual violence increased sharply in 2020 (13) and 2021 (42). The National Commission on Violence Against Women also noted that based on the number of police officers reported to the National Commission on Violence Against Women, which was 99 cases, 25% were cases of sexual violence as presented in the table.

The development of information technology which has had a major impact on various areas of life has also had an impact on incidents of electronic-based sexual violence. The National Commission on Violence Against Women's 2022 Notes stated the figures for electronic-based sexual violence as presented below:



Source : Annual Record of Komnas Perempuan Republik Indonesia 2022 and translated into English

Based on the data, the perpetrators of electronic-based sexual violence are those who are or have had a very close relationship with the victim, namely 534 ex-boyfriends, 373 social media friends, and 220 boyfriends. The high level of sexual violence that occurs in society is mostly carried out by those who have a close relationship between the perpetrator and the victim, such as boyfriends, ex-boyfriends, husbands and other social media friends, indicating a weakening of social norms that are built from cultural, moral and religious norms adopted by Indonesian society. The weakening of social norms is related to the implementation of state law through the Criminal Code, the Domestic Violence Law, the Law on Sexual Violence Crimes which do not prohibit sexual behavior that is carried out on a voluntary basis. The implementation of these laws ignores social, cultural and religious norms that prohibit sexual relations even though they are based on the consent of the perpetrators. This exclusion as in the 6th UN Congress in 1980, namely the importation of foreign cultural patterns which did not harmonize

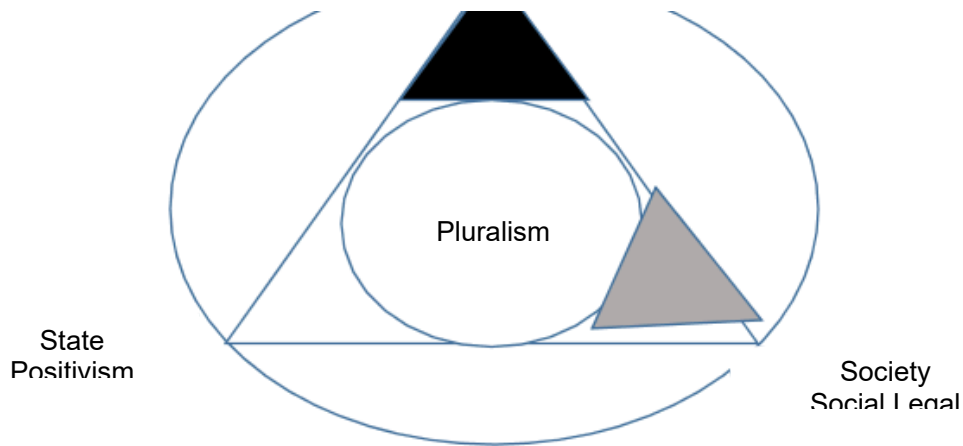
with the indigenous culture had a criminogenic effect (Sixth UN Congress 1980, p. 42). It is natural that the application of criminal law through the work of legal apparatus based on existing legislation and supported by available institutions such as the National Commission on Violence Against Women, various government agencies - which provide protection to women and children, and various non-governmental organizations - are unable to prevent sexual violence. These laws and legal institutions, which are the embodiment of modern law, have worked to prevent sexual violence in modern Indonesian society. However, the reality of sexual violence continues to occur and shows an increase and emergency of sexual violence. Incidents of sexual violence have also taken place in educational institutions including Islamic boarding schools. The facts of the trial with the convict Herry Wirawan with the victim being a child student have proven that there was sexual violence (Safik Faozi, 2023). However, the interesting incident of sexual violence is also the fact that the trial with the convict M. Subchi only

was a child, while the other victims were adult students, so it was not a crime. The applicable law - as a form of modern law - does not constitute a crime of sexual violence because it is considered to have been carried out voluntarily. Although in the incident there was a dominance of power between the caretaker of the Islamic boarding school and his female students (Safik Faozi, 2023). The implementation of modern law like this is not built on the basis of social, cultural and religious norms that prohibit sexual relations even though they are voluntary. The consequences are actually contradictory. In fact, the issue of criminal law and the imposition of punishment must be based on the views of the community. The conception of the problem of crime and punishment is an essential part of the culture of any society (Karl O. Christiansen, 197, p. 78). Criminal justice system consists of the philosophy behind a given country (W. Clifford, 1973, p. 6).

The ideology underlying the Criminal Code and laws governing sexual violence is individual freedom in sexual relations as long as it is consensual. On the other hand, social, cultural and religious norms adopted by Indonesian society, including Muslims, are prohibited acts. These legal norms are derived from divine knowledge. In relation to Indonesian society based on Pancasila, Prof. Muljatno relates it to the value of

from the Holy Book (Bismar Siregar, 1991, p.31). This approach is called Barda Nawawi Arief as a juridical-scientific-religious approach. (Barda Nawawi Arief, 2010, p.14-15). The divine pattern in criminal law is also in accordance with the views of religious adherents in Indonesia, including Muslims who place sexual violence as a prohibited act. The prohibition of adultery regulated in Islam is carried out with or without the consent of the victim. In Javanese culture, there is a taboo known as Mo Limo (five prohibitions), one of which is the prohibition of playing with women (committing adultery). Even in Islam, what is prohibited includes the prohibition of approaching adultery. This is regulated in the Qur'an, Surah Al-Isra', verse: 32, which means: And do not approach adultery; indeed adultery is an abominable act and a bad way. This religious norm has been adopted and become a cultural norm to avoid adultery for groups of people who obey social norms that originate from God's norms. Criminal law as part of the law is derived from statutes and customary law. Customary law as a social norm can come from religious norms or from the results of the process of giving and receiving that is accepted by the community voluntarily. This explanation is described as follows:: (Menski, 2014, p.240-241).

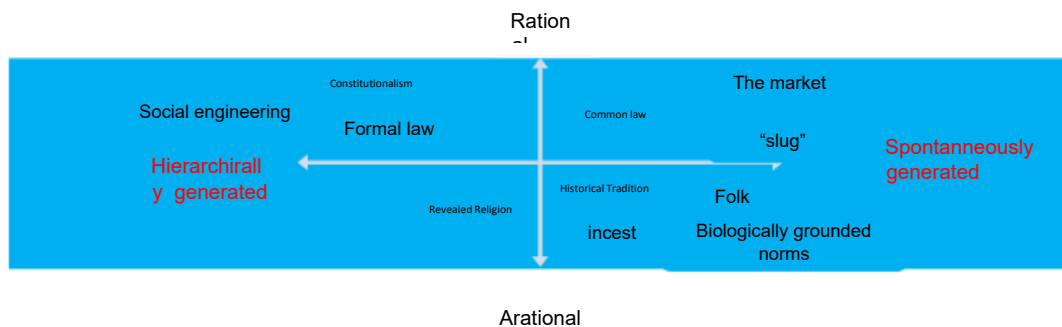




12 The illustration of the interaction can at least explain that the source of the application of criminal law to sexual violence in modern Indonesian society should not only be based on legislation

by ignoring the morals, Francis Fukuyama also includes religion and customary law as sources of social order as in the picture below: (Francis Fukuyama, 1999: 152)

Figure 3  
Source of Order



The diverse sources of legal norms form a circle of interaction. The results of this interaction can explain that when the implementation of criminal law based on legislation ignores the morals, culture and religion of its society so that it is criminogenic then

principles of the Unitary State of the Republic of Indonesia, which are regulated in law. Article 28 I paragraph 4 mandates that the protection, advancement, enforcement and fulfillment of human rights are the responsibility of the state especially

society so that it is criminogenic, then by referring to the UN Congress in 2013, it recommends strengthening social norms with cultural values. Strengthening legal norms originating from cultural and religious norms regarding the prevention and handling of sexual violence in modern Indonesian society is not only to restore crime prevention based on the community's outlook on life but also to prevent the development of criminogenic laws, one of which is ignoring the moral, cultural and religious values embraced by its society. Strengthening culture, morals and religion has become a criminal law policy as stated in the 2023 Criminal Code when it includes living law as one of the sources of law. Article 2 paragraph (1) of the 2023 Criminal Code. The formulation is as follows:

(1) The provisions as referred to in Article 1 paragraph (1) do not reduce the validity of the law that is alive in society which determines that a person should be punished even though the act is not regulated in this Law.

This provision is a manifestation of the state to protect and advance customary law as mandated in Article 18 B paragraph (2) of the Constitution of the Republic of Indonesia, namely: The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the

responsibility of the state, especially the government. Law No. 39 of 1999 concerning Human Rights also mandates that the state is obliged to encourage and advance the human rights of a particular community based on the cultural awareness of its community. The cultural awareness of the community that prohibits sexual violence with or without consent must be respected and enforced. In the perspective of human rights, this is a constitutive manifestation of the state to respect, protect and fulfill the basic rights of citizens (Sefa Martinesya, 2020: p. 75).

Thus, sexual violence in modern Indonesian society which has so far used state laws that ignore the morals, culture and religion embraced by the community and show criminogenic factors has been strengthened again by laws based on the morals, culture and religion embraced by the community as living laws in society (living law).

## CONCLUSION

1. Critical study of modern law that is characterized by laws that set aside customary law and religious norms. The regulation of Criminal Acts of Sexual Violence through Law No. 12 of 2022 which does not prohibit sexual relations without marriage weakens the norms of customary law and religious law adopted by the Indonesian people. The weakening of laws based on morals, culture

and community culture is criminogenic to the occurrence of sexual violence in modern Indonesian society. Critical studies explain the existence of customary law, religion in addition to laws as laws that apply in plural Indonesian society as an effort to strengthen customary law and religious law that

violence cases that occur and are not reported.

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regulate the prohibition of sexual relations that are not bound by marriage. This strengthening is to eliminate the criminogenic factor of increasing sexual violence caused by the weakening of morals, culture and religious norms through laws that are liberal and individualistic in nature towards sexual relations that are not bound by marriage.

2. The increase in the number of sexual violence in 2023 further emphasizes the emergency of sexual violence. Critical studies explain that this emergency is more concerning because the figures presented in criminal statistics are less than the actual reality. Statistical data from the National Commission on Violence Against Women, the most common types of violence are intercourse, electronic-based sexual violence, sexual harassment, molestation, rape, and incest. The perpetrators of sexual violence are mostly boyfriends, husbands, biological fathers, brothers, stepfathers, ex-boyfriends and uncles. They have close relationships with the victims. Critical studies explain the dominance and power relations of perpetrators and victims, the perceptions of victims, society, law enforcement officers related to sexual violence, many sexual

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