



# The Urgency of Strengthening Regulation and Implementation of Mental Health Protection in Handling Sexual Violence in the Criminal Justice System

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**Abstract.** In the criminal justice system, legal protection for mental health is an important problem, particularly when sexual abuse is involved. Sexual assault victims often experience prolonged psychological trauma, while perpetrators may also have mental health conditions that need to be considered in the judicial process. The criminal justice system in Indonesia has not fully provided adequate protection for mental health aspects for both victims and perpetrators. In this context, it is important to examine the regulations governing mental health protection in the criminal justice system and how they are applied in the practice of law. This study employs a normative methodology that combines a conceptual and statutory approach. Implementing the statute approach is done by analyzing various regulations related to mental health protection in the criminal justice system, both in national law and international legal instruments. Meanwhile, the conceptual approach is used to examine the theory of legal protection, the theory of mental health in criminal law, and the restorative justice approach as an alternative in handling cases of sexual violence. The data were obtained through a literature study by reviewing laws and regulations, scientific journals, law books, and relevant official documents. Through this study, it is expected to find a normative mapping regarding legal protection for mental health in the criminal justice system, especially for victims and perpetrators of sexual abuse. This study also intends to identify gaps in existing rules and make ideas for revisions to promote legal protection for mental health in the criminal justice system in Indonesia.

**Keywords:** Criminal justice system, legal protection, mental health, sexual violence.

## 1. INTRODUCTION

Sexual violence is a crime that not only has physical impacts but also has serious psychological impacts on victims (Kartika, 2020). Victims of sexual violence often experience prolonged trauma, anxiety disorders, depression, and post-traumatic stress disorder (PTSD). This trauma can be exacerbated if the victim does not receive adequate legal protection in the criminal justice system (Darmayasa, 2023). The long legal process and often requiring victims to provide repeated testimony can worsen their mental condition. Therefore, the criminal justice system must be able to provide legal protection that not only focuses on punishing the perpetrator but also on the psychological recovery of the victim so that they can continue their lives without fear and prolonged mental stress.

On the other hand, the mental health of the perpetrator is also an aspect that cannot be ignored in the criminal justice system. Some perpetrators of sexual violence may have mental disorders that affect their behavior, so a comprehensive psychological assessment is needed in the legal process. In some cases, certain mental disorders can affect the criminal responsibility of the perpetrator (Ibipurwo, 2022). Therefore, the legal system needs to provide a balanced approach between punishment and rehabilitation for perpetrators with mental disorders. It aims

to ensure that the justice system does not only emphasize the aspect of punishment but also considers mental health factors in determining the appropriate form of sanctions.

However, until now there is still a gap in legal protection for mental health in the criminal justice system, both for victims and perpetrators. Although various regulations have regulated the rights of victims, the implementation of mental health protection in practice is still not optimal. Many victims experience re-victimization in the legal process due to a lack of psychological support, while perpetrators with mental disorders often do not receive adequate assessment and rehabilitation (Rasiwan, 2024). It shows the need for improvements in the legal system that are not only oriented towards retributive justice but also pay attention to aspects of psychological recovery for all parties involved in cases of sexual violence.

## **2. METHOD**

In order to analyze legal concepts and laws that are relevant to the criminal justice system's protection of mental health, this study applies a normative legal research technique, particularly in cases of sexual violence. Both a legal method and a conceptual approach were employed in this investigation. The statutory approach is looking at different national and international laws that safeguard victims' and offenders' mental health within the criminal justice system. International legal instruments such as the Convention on the Rights of the Child, Law Number 12 of 2022 about Criminal Acts of Sexual Violence, and Law Number 35 of 2014 concerning Child Protection are among the regulations that were examined (CRC) and the Convention Against Torture (CAT).

Furthermore, a conceptual approach is used to understand the legal theory underlying mental health protection in the criminal justice system. The theories used include the theory of legal protection, which explains the state's obligation to protect individual rights, as well as the theory of mental health in criminal law, which discusses the importance of psychological aspects in the justice system. This study also investigates the restorative justice approach as an alternative in handling cases of sexual violence, emphasizing victim recovery and perpetrator rehabilitation.

The data were collected through library research, which includes analysis of laws and regulations, scientific journals, law books, as well as associated official documentation. After that, the collected data was examined descriptively and qualitatively to identify the extent to which existing regulations have accommodated mental health protection in the criminal justice system and to reveal gaps in its implementation. Using this approach, the study should offer a

thorough grasp of the legislative safeguards for mental health inside Indonesia's criminal justice system.

### **3. RESULT AND DISCUSSION**

#### **Legal Protection for the Mental Health of Perpetrators and Victims of Sexual Violence**

In the criminal justice system, the theory of legal protection emphasizes that every individual, both victims and perpetrators, has the right to receive fair treatment and protection from the negative impacts of the legal process. Legal protection not only includes the right to defense and procedural justice, but also includes protection of mental health (Prakoso, 2024). According to several international legal documents, including the Universal Declaration of Human Rights, the right to mental health is acknowledged as a component of human rights (UDHR) and the Convention on the Rights of the Child (CRC) (Renggong & Ruslan, 2021). Therefore, the state must ensure that individuals involved in the criminal justice system have access to adequate mental health services, both in the form of psychological assistance for victims and mental assessments for perpetrators. Meanwhile, the mental health theory in criminal law highlights the significance of psychological aspects in the judicial process. For victims of sexual violence, the trauma they experience can hinder their participation in the legal process, so a victim-friendly mechanism is needed to reduce the negative psychological impact (Novilia, 2024). For perpetrators, mental health conditions can affect the level of criminal responsibility and the type of sanctions given. In this context, the restorative justice approach is an alternative in the criminal justice system, which focuses not only on punishment but also on the psychological recovery of all parties involved. This approach prioritizes dialogue, victim recovery, and perpetrator rehabilitation to prevent the recurrence of criminal acts (Safitri, 2023).

Victims of sexual violence have the right to legal protection, including in terms of mental health. The victim's right to psychological rehabilitation is recognized in national and international law. In national law, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) explicitly regulates the victim's right to psychological recovery. Article 67 of the TPKS Law emphasizes that victims have the right to recovery that includes medical, social, and psychological rehabilitation (Hairi, 2024). In addition, According to According to Article 5 paragraph (1) of Law Number 31 of 2014 concerning Protection of Witnesses and Victims, victims are entitled to medical attention as well as psychosocial rehabilitation. International law's Convention on the Elimination of All Forms of Discrimination Against

Women also highlights the importance of safeguarding and healing victims of sexual abuse. (CEDAW) and the Convention on the Rights of the Child (CRC) (Larasati, 2020).

Law enforcement agencies have a crucial role in providing psychological support for victims of sexual violence. Article 36 of the TPKS Law mandates that law enforcement officers must treat victims with respect for their dignity and psychological condition. A victim-friendly examination mechanism is also explained in Article 35 of the TPKS Law, which stipulates that the examination process must be carried out with an approach that does not add to the victim's trauma. In addition, According to Article 10 of the Witness and Victim Protection Law, the Witness and Victim Protection Agency (LPSK) is in charge of protecting and rehabilitating victims (Fevernova, 2023). Although various regulations have regulated victim recovery, implementation in the field still encounters obstacles, such as the lack of professional forensic psychologists and limited access for victims to adequate mental rehabilitation services (Asmarany, et al., 2025).

In the criminal justice system, the mental health of the perpetrator is also an aspect that must be considered, especially about criminal liability. Criminal law recognizes that a person's mental condition can affect their awareness and will in committing a criminal act. In the Criminal Code (KUHP), Article 44 stipulates that a person who commits a crime in a state of mental disorder or is not in a perfect state of mind cannot be held criminally responsible. However, this provision does not automatically free the perpetrator from legal consequences, but can be the basis for imposing alternative measures such as treatment in a mental hospital or rehabilitation (Makanoneng, 2016).

The influence of mental disorders on the criminal liability of the perpetrator is also related to psychological assessments in the legal process. Article 23 paragraph (2) of the TPKS Law states that in the examination of perpetrators of sexual violence, a psychological assessment can be carried out to determine their mental condition (Rizky, 2024). In addition, Law Number 18 of 2014 concerning Mental Health emphasizes that people with mental disorders have the right to receive proper treatment, including in the context of criminal law. In practice, this assessment is important to determine whether or not the perpetrator has the capacity to be responsible for his/her actions, or require medical intervention (Waskito, 2024).

In addition, regulations related to the rehabilitation of perpetrators are also regulated in national law. Article 53 of the Correctional Law (Law Number 22 of 2022) states that prisoners with mental disorders have the right to receive appropriate treatment. This shows that the criminal justice system is not only oriented towards punishment, but also considers rehabilitation for perpetrators with mental disorders (Afrizal, 2024). However, in its

implementation, there are still challenges such as limited rehabilitation facilities in correctional institutions and the lack of integration between the criminal justice system and mental health services. Therefore, it is necessary to strengthen regulations and more effective mechanisms to ensure that perpetrators with mental disorders receive treatment that is appropriate to their psychological condition, without neglecting the aspect of justice for the victim.

### **Evaluation of Regulation and Its Implementation in the Criminal Justice System**

The protection of mental health under Indonesia's criminal justice system is governed by various regulations, but there are still advantages and disadvantages in its implementation. One of the advantages of the existing regulations is the explicit recognition of the victim's right to receive a psychological recovery, as regulated in Article 67 Concerning Criminal Acts of Sexual Violence (UU TPKS) Law Number 12 of 2022, which states that victims have the right to medical, psychological, and social rehabilitation (Risal, 2022). In addition, Article 5 paragraph (1) of The right of victims to obtain psychosocial support is also emphasized by Law Number 31 of 2014 about the Protection of Witnesses and Victims. From the standpoint of the offender, Article 44 of the Criminal Code offers a legal foundation that an individual might has a mental disorder or is not mentally perfect cannot be punished, and can be subject to other measures such as rehabilitation or medical care. In addition, Article 53 of the Correctional Law (Law Number 22 of 2022) stipulates that prisoners who experience mental disorders have the right to receive treatment according to their needs. Although various regulations have accommodated mental health protection in the criminal justice system, there are still various challenges in its implementation.

One of the main challenges is the limited human resources and psychological rehabilitation facilities for victims and perpetrators. Many victims of sexual violence have difficulty accessing psychological services due to the lack of experts, high costs, and the social stigma that persists (Rohmah, 2022). Article 36 of the TPKS Law stipulates that law enforcement officers must treat victims by considering their psychological condition, but in practice, victim examinations are still often carried out without considering the trauma aspect. On the other hand, for perpetrators with mental disorders, there is no clear mechanism regarding standard psychological assessments in the criminal justice system, although Article 23 paragraph (2) of the TPKS Law states that psychological assessments can be carried out in examinations of perpetrators of sexual violence. In addition, correctional institutions (prisons) often do not have sufficient facilities to provide rehabilitation for perpetrators with mental disorders, so many of them do not receive adequate treatment (Rizal, 2023).

To overcome these challenges, it is essential to strengthen regulations and practices in the field. First, there needs to be more detailed implementing regulations regarding the psychological assessment mechanism for victims and perpetrators in the criminal justice system so that it is not only a normative rule but is implemented in practice. Second, it is necessary to increase the capacity of law enforcement and correctional institutions to handle mental health issues, for example by providing special training for investigators, prosecutors, and judges to be more sensitive to the psychological conditions of victims and perpetrators. Third, access to psychological services for victims and perpetrators must be expanded by building more psychological rehabilitation centers that are integrated with the criminal justice system. In this case, the state must ensure that these services can be accessed free of charge or at an affordable cost for victims, as mandated in Article 35 of the TPKS Law which states that victims have the right to receive recovery services at no cost (Rini, 2022). Finally, the restorative justice approach must also be strengthened as an alternative for certain cases, so that the focus is not only on punishment but also on the psychological recovery of all parties involved in the case (Ridwan, 2024). With more effective regulatory and practice reforms, mental health protection in the criminal justice system can be further optimized to ensure balanced justice for both victims and perpetrators.

#### **4. CONCLUSION**

Legal protection for mental health The Criminal Code, the Law on Witness and Victim Protection, and the Law on Sexual Violence Crimes are among the laws that control the criminal justice system (UU TPKS). The primary conclusions demonstrate that victims of sexual assault are entitled to psychological rehabilitation, while perpetrators with mental disorders can be given special assessments in the legal process. However, there are still gaps in the implementation of regulations, such as limited access for victims to psychological services, the lack of a mental health assessment mechanism for perpetrators, and minimal training for law enforcement officers in handling psychological aspects in cases of sexual violence.

To strengthen mental health protection in the criminal justice system, regulatory improvements are needed, including the preparation of more detailed implementing regulations regarding victim rehabilitation and mental assessments for perpetrators. In addition, increasing the capacity of law enforcement officers is very important so that they are more sensitive in handling victims and perpetrators with certain psychological conditions. Advocacy from human rights protection institutions and social organizations is also needed to ensure the

fulfillment of mental health rights for all parties involved in the justice system. By strengthening regulations, increasing resources, and support from various parties, the criminal justice system can be more equitable and provide comprehensive protection for the mental health of victims and perpetrators of sexual violence.

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