

## Sexual Violence Against Women As A Violation Of Human Dignity: A Criminal Law Perspective

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### Abstract

Sexual violence against women is rooted in discrimination by men, such as the restriction of women's rights or specific societal views regarding male superiority. **This study aims** to examine sexual violence against women from a criminal law perspective using a normative research method. **The analysis reveals** Sexual violence against women constitutes a violation of human rights and human dignity, as stated in the General Elucidation of the Sexual Violence Crime Act. The Sexual Violence Crime Act operates under the principle of *lex specialis derogat legi generali* (special law overrides general law) in relation to the Criminal Code. Under this Law, violence against women is generally classified as an ordinary offense (rather than a complaint based offense). Most of these criminal acts are classified as formal offense meaning the act is defined without regard to the consequences resulting from the act itself except for Articles 8 and 9, which regulate forced contraception and forced sterilization. This classification as a formal offense aims to protect victims by simplifying the burden of proof. These acts of sexual violence are committed intentionally to achieve specific objectives, with full awareness and certainty. **In conclusion**, the criminal offense under this Law is not a complaint based offense but rather an ordinary offense. It is formulated as a formal offense, given the highly detrimental impact such actions have on women.

## **I. Introduction**

In sociological terms, crime is referred to as deviant behavior or antisocial conduct. Within society, it is a frequently occurring social phenomenon. It is a frequently occurring social phenomenon within society. This behavior deviates from social norms; it is classified as a criminal offense if it violates legal norms. Such laws may be either written or unwritten. The legislature establishes written law, whereas the local community establishes unwritten law. However, it should be noted that a criminal act may only be subject to sanctions (punishment) if it has been established and enacted by the legislature, whether at the provincial or regency/city level. This is in accordance with Government Regulation Number 55 of 2025 regarding the procedures for establishing law that is alive in the community (living law or customary law). This matter is regulated under Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the criminal code).

The National Commission on Violence Against Women (Komnas Perempuan) classifies violence against women as gender-based violence. The commission recorded a total of 376,529 cases of gender-based violence throughout 2025. According to KOMNAS Perempuan, this figure has increased compared to the previous year due to the increasing availability of victim support services, which provide victims and the public with access to report/complaint. **(Febriyanti, 2026)**. The state has undertaken numerous efforts to prevent this violence, such as through legal instruments; other measures include the establishment of Regional Technical Implementation Units for the Protection of Women and Children, as well as advocacy initiatives launched by the community and formal institutions, such as universities.

Violence often stems from initial discrimination against women, eventually manifesting as violent behavior across three spheres: the personal, the public, and

the state. According to Susan Watson, the public and state spheres are distinct; state-level violence involves acts by authorities or discriminatory policies, whereas violence in the public sphere is perpetrated by the general public. . **(Watson, 2026)** The personal sphere encompasses violence perpetrated between individuals such as abuse by a boyfriend or by a religious teacher against a female student. This form of sexual violence has a profound impact on victims, extending beyond mere physical injury to encompass health issues and severe trauma, particularly psychological trauma. According to Stephen Pabalelo Nawa, gender-based violence including sexual violence violates human dignity and undermines the health, safety, and autonomy of those affected. **(Nawa, 2022)**

Indonesia's legal measures for addressing sexual violence are stipulated in Law Number 12 of 2022 concerning the Crime of Sexual Violence. Even United Nations has adopted various treaties to prevent violence (including sexual violence) against women. These treaties have been ratified by a number of countries, including Indonesia. Several laws have been enacted and passed by the Indonesian government to address sexual violence. However, victims are often unwilling to report the incidents, even though sexual violence generally does not constitute a complaint based offense under criminal law. Even in the United States is a developed nation many victims of sexual violence do not report the abuse they have suffered; as noted by U.S. Supreme Court Justice Brett Kavanaugh, this is due to the victims' vulnerabilities, such as fear, shame, and self-blame. **(Fohring, 2026)** Rachael Goodman Williams et al. have noted that in the United States, victims of sexual violence often refrain from reporting the incident to the police, even when a forensic examination (Sexual Assault Evidence Kit) has been conducted; only about 20% of victims utilize the examination for the purpose of reporting. This reluctance stems from concerns that reporting will not yield a meaningful impact

on their situation or could even exacerbate their circumstances.. **(et.al, 2024 )** The situation in Indonesia is not unlike that in the United States; as Silvi Nurahmad et al. have noted, victims often fail to report the sexual violence they have endured due to social factors. These include deeply rooted patriarchal norms that are difficult to eradicate, societal stigma that blames the victim and views their behavior as a source of family shame, and a lack of sensitivity among law enforcement officials. **(Silvi Nurahmad, 2025)**

Violence committed by humans is contrary to the essence of humanity itself as creatures of the Almighty God who are endowed with reason and conscience. Amon Bekele adheres to the Kantian view that violence and freedom are polar opposites. Violence constitutes a form of absolute domination by an individual or group over something deemed their own, whereas freedom is the capacity of a rational individual for self-governance through submission to natural and moral laws. Therefore, according to Kantian respect for human dignity, it is normal not only to obey one's desires and cause violence to other individuals. **(Bekele, 2024)** Gabrielle Mardon and Louise Richardson-Self argue that violence is a transgression capable of inciting conflict or hostility. Consequently, they maintain that the law can address this issue though the law should not be equated solely with courtrooms, juries, and lawyers. The law serves functions of education, prevention, the restoration of social balance, and liberation from violence. Nevertheless, the law can also create and perpetuate injustice. **(Richardson-Self, 2022)**

We agree with the view of Gabrielle Mardon and Louise Richardson-Self regarding the impact of legal mechanisms—particularly concerning (sexual) violence against women—noting that, on one hand, they can serve as tools for education, prevention, the restoration of social balance, and liberation from violence. On the other hand, they can give rise to injustice if the law is interpreted

in a strictly legal-formalistic manner, rather than through a perspective that takes women's experiences into account. Bakri stated that Indonesian society is patriarchal, disregarding the experiences and needs of women, particularly regarding sexual violence resulting in laws that reflect patriarchal power dynamics and the inherent imbalance in social relations between men and women. Feminist legal theory seeks to shift this societal mindset by reforming legal structures to prioritize the interests of women (a vulnerable group) and ensure gender responsiveness throughout the entire process, from legislation to advocacy. **(Rendra Bhaktie Kusuma et.al, 2025)** Alternatively, regarding the function of law, Yeni Triana et al. which quotes Roscoe Pound opinion note that law serves as an instrument of "social engineering," meaning it acts as a tool for societal change. **(Yeni Triana, 2024)** Therefore, this manuscript aims to examine sexual violence against women as a violation of human (specifically, women's) dignity from the perspective of criminal law.

## **2. Research Method**

This paper presents a normative legal study often referred to as library research utilizing a statutory approach. **(Rosidin M. A., 2023)** The required data is secondary in nature, comprising primary legal materials (Sexual Violence Crime Act), journals and references relevant to the paper's subject matter. Data collection involved the identification, screening, and/or evaluation of the identified data, followed by the recording of the evaluation results. Data analysis was conducted using legal theories, particularly within the field of criminal law, such as theories regarding the unlawful nature of an act involving the element of intent (\*mens rea\*) and the classification of offenses or criminal acts.

### 3. Results and Discussion

#### A. Violence against Women under Human Rights Law

Human rights are inherent to human nature. This means that God bestows fundamental rights upon human beings at birth; these rights cannot be revoked by any individual nor by the state. These fundamental rights namely the right to life and liberty are essential rights. The United Nations (UN) addresses these natural rights, and all UN member states incorporate human rights into their laws or policies. The declaration governing human rights is the Universal Declaration of Human Rights (UDHR) of December 10, 1948. Indonesia had established similar provisions earlier—specifically on August 18, 1945, but these initially defined the rights of citizens. It was only following the amendment of August 18, 2000, that human rights were explicitly established, as set forth in Articles 28A through 28J. The Universal Declaration of Human Rights (UDHR) affirms everyone's right to life, liberty, and personal security; this encompasses the rights of women. **(United Nations, 1948)**

The United Nations further reinforced women's rights through the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as CEDAW) of December 18, 1979. This convention provides for the protection of women against state policies that discriminate against them. Indonesia ratified it through Law No. 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women. However, Indonesia entered a reservation regarding the ratification, specifically rejecting Article 29 of CEDAW; Indonesia declined to accept arbitration for the settlement of disputes between two or more states concerning the interpretation and application of the convention. (Republik

Indonesia, 1984)

These declarations and conventions play a crucial role in shaping legal norms for various countries, including Indonesia. Their aim is to promote gender equality and protect women from arbitrary treatment, notwithstanding the cultural, political, and socio-economic obstacles to achieving these goals. Consequently, the state bears a moral obligation throughout the legal process from formulation to actual implementation to prioritize the gender specific needs of vulnerable groups. (Salvia Salsabila Putri Kastiady, 2024) Indonesia has incorporated the provisions of the Universal Declaration of Human Rights (UDHR) into Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law), which establishes the fundamental rights of every individual rights that cannot be derogated from, even by the state. Furthermore, the state is obligated to guarantee and protect these rights.

Article 33 of the Human Rights Law stipulates that (1) every individual has the right to be free from torture, punishment, or treatment that is cruel, inhuman, or degrading to human dignity; (2) every individual has the right to be free from enforced disappearance and the deprivation of life. The phrase "everyone" implies the absence of distinction based on gender (male or female), which aligns with the formulation of Article 45 regarding human rights. This Human Rights Law serves as an elaboration of CEDAW, establishing that discriminatory principles against women in political, economic, social, cultural, civil, or other spheres including the legal realm—are prohibited, specifically regarding (1) exclusion, (2) distinction, or (3) restriction.

The Human Rights Law serves as an essential overarching norm protecting women from violence, the perpetrators of which are predominantly men. The form of violence women fear most is generally sexual violence. This situation is

highlighted by Priyono Tri Febrianto et al., who found that among the 377 informants interviewed sexual violence was cited as the most feared form of violence due to concerns regarding pregnancy, the contraction of sexually transmitted diseases, the commission of sin, and feelings of inferiority. (al, 2022) Therefore, all forms of violence including sexual violence are implicitly recognized as human rights violations under General Assembly Resolution 48/104, the Declaration on the Elimination of Violence against Women, adopted on December 20, 1993. Asit Defi Indriyani and Rachma Dini Fitria stated that sexual violence is a form of discriminatory behavior against women that violates the right to human dignity. (Fitria, 2022) According to Manpreet Kaur, sexual violence against women and girls, including sexual harassment, violates the value of human dignity. (Kaur, 2026)

According to Immanuel Kant as cited by Otto Gusti Madung said that human dignity encompasses the effort to uphold peace and justice, particularly in societies characterized by diversity in terms of culture, ethnicity, skin color, and religion. (Otto, 2020) Although Kant does not explicitly state that society consists of male and female individuals who must look out for and respect one another — thereby fostering harmony, peace, and justice, and preventing violence his concept is nonetheless implied. Human dignity serves as a solid foundation for the establishment and formulation of human rights. Paolo G. Carozza asserted that every human being possesses equal, fundamental, and inherent worth, thereby making human dignity an essential basis for the formation of various principles. These principles arise from societal consensus and the political commitment of states, subsequently being codified into universal law; consequently, everyone is obliged to respect them, and the state is duty-bound to ensure their enforcement in order to realize peace and justice. (Carozza, 2022,)

## **B. Sexual Violence under Indonesian Criminal Law**

The United Nations adopted a declaration on violence against women through General Assembly Resolution 48/104 on December 20, 1993, known as the 1993 Beijing Declaration. Approximately 189 countries agreed to the declaration, including Indonesia. The declaration had three primary objectives: *firstly*, to eliminate the endemic and persistent violence and restrictions faced by women. *Secondly*, to uphold the principles of equality between men and women across all spheres of life—including the social, economic, political, cultural, and defense sectors, as well as the legal system; and *thirdly*, to serve as a moral foundation for signatory nations to enact laws and ensure their enforcement. (Nations, 1979)

The Indonesian government's follow-up measure to address sexual violence against women was the formulation, enactment, and promulgation of Law No. 12 of 2022 concerning the Crime of Sexual Violence on May 9, 2022. In accordance with legal principles, this law serves as *lex specialis derogat legi generali* in relation to the Criminal Code.

The general explanation of the Sexual Violence Crime Act states that sexual violence is a crime against human dignity and a form of discrimination against women; therefore, sexual violence constitutes a violation of human rights. (Indonesia, 2022) Article 4 of the Law on Sexual Violence Crimes enumerates several types of criminal offenses, namely: (1) non-physical sexual harassment; (2) physical sexual harassment; (3) forced contraception; (4) forced sterilization; (5) forced marriage; (6) sexual torture; (7) sexual exploitation; (8) sexual slavery; (9) electronic-based sexual violence; (10) rape; (11) obscene acts; (12) sexual intercourse with a child, obscene acts against a child, and/or sexual exploitation of a child; (13) acts violating decency that are contrary to the victim's will; (14) pornography

involving a child or pornography explicitly containing sexual violence and exploitation; (15) forced prostitution; (16) the crime of human trafficking aimed at sexual exploitation; (17) sexual violence within the domestic sphere; (18) the crime of money laundering where the predicate offense is a crime of sexual violence; and (19) other criminal offenses expressly declared as crimes of sexual violence under statutory regulations. (Republik Indonesia, 2022)

The Sexual Violence Crime Act regulates sexual violence offenses categorized as either complaint-based offenses or ordinary offenses (general criminal offenses). According to Sandi Yoga Pradana et al. stated that the concept of a complaint-based offense—which grants greater control to the victim by centering the proceedings on their complaint carries a risk of injustice, particularly for vulnerable groups such as women, as the victim may withdraw the complaint.. (al., 2026) Firstly, Article 7 stipulates that non-physical sexual harassment (Article 5) and physical sexual acts (Article 6, letter a) are complaint-based offenses; however, if the victim is a person with a disability or a child, the offense becomes one that is prosecuted *ex officio*. Secondly, regarding Article 14 paragraph (1) electronic-based sexual violence. Article 14 paragraph (3) classifies it as a complaint-based offense; however, if the victim is a child or a person with a disability, it becomes an ordinary offense. Furthermore, Article 14 paragraph (5) establishes that, in cases of electronic-based sexual violence involving child victims or victims with disabilities, the intent regarding the victim does not negate criminal prosecution.

The Law on Sexual Violence Crimes largely applies the concept of "formal offenses"—meaning the crime is deemed to have occurred without the need for a specific consequence—although certain articles are formulated as "material offenses." Examples of formal offenses include the provisions in Article 5 (non-physical sexual harassment) and Article 6 (physical sexual harassment). Nazwa

Aulia Khairunnisa et al. stated that sexual violence not only causes physical suffering but also significantly impacts the victim's emotional and mental stability over the long term. (Nazwa Aulia Khairunnisa, 2025) In contrast, a material offense is defined as a criminal act that is deemed complete only when it produces a consequence prohibited by legislation such as those described in Articles 8 and 9 (forced contraception and sterilization), where the female victim loses her reproductive function either temporarily or permanently. Consequently, the formulation of a \*formal offense\* facilitates the burden of proof, as the act of sexual violence does not require the occurrence of a specific consequence to be established, thereby ensuring legal certainty. (Margono, 2025)

The formulation of the element of unlawfulness in the Sexual Violence Crimes Law varies; in some instances, it is stated explicitly, while in others, it is replaced by terms carrying the same meaning. For example, Articles 6(b), 10(1), and 13 expressly formulate the element of unlawfulness. In other cases, the concept is replaced by the term "forcing"—implying an act contrary to the victim's will—as seen in Article 9. Meanwhile, in Article 14, the concept of unlawfulness is expressed through phrases such as "without right" or "without consent."

Furthermore, regarding the Law on Sexual Violence Crimes, a close examination of the formulation concerning the element of culpability which serves as the basis for the perpetrator's criminal liability reveals that the law adopts a standard of intent rather than negligence. The law defines intent as purpose (or "simple intent"), meaning the perpetrator's primary aim or motive is to bring about the consequence prohibited by the legal provision. Additionally, the law encompasses intent based on awareness of certainty, wherein the perpetrator does not directly desire the consequence of their actions but is aware that such a consequence will inevitably occur. Alternatively, the Sexual Violence Crimes Law

adopts the concept of intent based on the certainty that, although the perpetrator does not directly aim for the consequence of the act, that consequence is certain to occur. (Bandar Subhandi Baktiar, 2026) An example of the formulation in Article 5 is intent (acting with purpose), while Article 8 represents intent with awareness of certainty. Furthermore, Article 23 of this Law does not permit penal mediation or out-of-court settlements—except in cases involving child offenders, even though the new Criminal Code (Law No. 1 of 2023 concerning the Criminal Code) provides for forgiveness by the victim and/or the victim's family under Article 54 paragraph (1) letter j.

#### **4. Conclusion**

Sexual violence against women continues to rise; this is driven by a culture that views women as inferior to men, thereby deeming them deserving of discrimination. The law is a factor capable of transforming society, as it serves to maintain order and security while simultaneously fostering social change.

Therefore, from a feminist perspective, the law must be interpreted in a manner that protects vulnerable groups (women). The United Nations has adopted the UDHR and CEDAW on a global scale. The objective of CEDAW is to achieve equality between women and men and to eliminate discrimination against women in all spheres of social life. Another significant instrument is the 1993 Beijing Declaration about violence against women.

Indonesian law established gender equality specifically between women and men at Articles 27 and 28 of the 1945 Constitution prior to its amendments; following the final amendment that resulted in the 1945 Constitution of the Republic of Indonesia, human rights were elaborated in greater detail across Articles 28A through 28J provisions further detailed in the Human Rights Law as essential legal norms. Consequently, violence against women is viewed as a

violation of human nature; indeed, the General Elucidation of the Law on the Crime of Sexual Violence states that sexual violence degrades human dignity.

Based on the Sexual Violence Crime Act enacted as a government effort to reduce sexual violence against women, such as offenses are generally classified as ordinary crimes (prosecutable without a formal complaint). Only a few provisions are designated as complaint-based offenses: *firstly*, Article 7, which applies to acts regulated under Article 5 about non-physical sexual harassment and Article 6 letter (a) about physical sexual acts with the proviso that the complaint requirement does not apply if the victim is a person with a disability or a child, in which case the act becomes an ordinary crime. *Secondly*, Article 14 paragraph (1), concerning electronic-based sexual violence, is classified as a complaint-based offense, except when the victim is a child or a person with a disability, in which case it becomes an ordinary crime as stipulated in Article 14 paragraph (3).

The criminal offense of sexual violence is defined as a *delictum formale* (formal offense); consequently, a person can be deemed to have committed the crime without the need to wait for the consequences of their actions to materialize, and the offense is generally easier to prove is a design intended to protect the victim. The requisite mental element is defined as intent, which, under criminal law doctrine, encompasses both intent as purpose and intent with awareness of certainty.

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