

## Effectiveness of Law Enforcement of Article 23 of Law No. 12 of 2022 on the Prohibition of the Implementation of Restorative Justice in Cases of Sexual Violence

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### ABSTRACT

This study analyzes the effectiveness of law enforcement against the prohibition on the application of restorative justice in cases of sexual violence as specified in Article 23 of Law No. 12 of 2022. This law prohibits the resolution of sexual violence cases through out-of-court channels for adult perpetrators, but practice in the field shows that the restorative justice mechanism is still often applied by law enforcement officers using the Chief of Police Regulation No. 8 of 2021 as the legal basis. The study was conducted at the Malang City Police and the Malang City Social Service P3AP2KB, which revealed obstacles such as social pressure, lack of public education, and the reluctance of victims to continue cases to the legal route. The results of the study show that the application of Article 23 has not been fully effective in protecting victims' rights and preventing re-victimization. This study recommends harmonization of regulations between Law No. 12 of 2022 concerning Criminal Acts and Perpol no. 8 of 2021, increasing public education, and strengthening legal and psychological assistance for victims.

**Keywords:** effectiveness of law, restorative justice, law no. 12 of 2022 concerning criminal acts of sexual violence, protection of victims

### INTRODUCTION

Life in today's society, sexual violence in Indonesia is increasing as released by the National Commission on Violence Against Women in 2024, there were 34,682 women who were victims of violence. And sexual violence reached the highest number, namely 15,621 cases. Meanwhile, psychological violence was recorded at 12,878 cases, and physical violence at 11,099 cases. In addition, there are also other types of violence that reached 6,897 cases. This violence does not only occur in the household, but also in the public sphere such as the workplace. In 2019, the National Commission on Violence Against Women reported that 2,988 cases of violence against women occurred in the household environment, while 2,521 other cases occurred in the community environment, including the workplace (Muflihah & Mursyid, 2021; Maulida, 2021; Hany, 2019). This has raised widespread concern among the public, especially regarding the protection of victims' rights. Many victims of sexual violence experience deep physical and psychological trauma, while the traditional legal system is often unable to provide adequate justice for them. To overcome this problem, the state must be present by providing protection for all citizens without conditions to fulfill their constitutional rights as stipulated in the 1945 Constitution (Maruarar, 2022).

The legal system in Indonesia often faces challenges in handling cases of sexual violence, especially in ensuring that perpetrators are punished fairly and victims receive

optimal protection. One issue that often arises is the use of a *restorative justice approach* that is not in accordance with the principle of victim protection in cases of sexual violence. In the Indonesian context, victims of sexual violence often face obstacles in obtaining justice because the legal system does not fully protect their rights. *Restorative justice*, which is intended to improve social relations and restore losses, is often used inappropriately in cases of sexual violence, where victims are forced to reconcile with the perpetrators, even though forced marriage (Damaiswari & Marlina, 2021).

Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, was born with a breath of fresh air for handling cases of sexual violence that have occurred so far and is expected to become a legal umbrella that can guarantee the protection of victims of sexual violence (Safitri et al., 2023; Mongkaren et al., 2023; Rizky et al, 2024; Wulansari, 2018). There are special provisions regulated in a quo Law regarding the mechanism for resolving cases of sexual violence. Article 23 of the Law on Criminal Acts of Sexual Violence stipulates that "Sexual Violence Criminal Acts cannot be resolved outside the judicial process, except for child perpetrators as regulated in the Law." This does not explain at all the concept of restorative justice in resolving cases of sexual violence.

The use of *restorative justice* in cases of sexual violence is a serious concern because it often ignores the rights of victims. In fact, Article 23 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence prohibits the resolution of sexual violence cases through non-litigation mechanisms, unless involving child perpetrators. However, in reality, many cases are stopped through this approach on the grounds of a peace agreement between the victim and the perpetrator. For example, the rape case of a Kemenkop UKM employee, a case of sexual violence against a female Kemenkop UKM employee with the initials ND allegedly committed by four of her co-workers, occurred on December 6, 2019. The case was investigated by the Bogor Police but was stopped, because of restorative justice, in addition to the reason for restorative justice, the victim is also afraid of experiencing discrimination and unfair treatment during the legal process. Not a few law enforcers are of the view that women are the ones who initiated it.

Female victims often also receive questions or statements that corner and harass law enforcers which result in fear and trauma (Ashila & Silalahi, 2018). When the case is handled by the court, the judge also often asks about the victim's sexual history in the evidence process and ignores the victim's need for proper assistance and recovery. The situations above make it even more difficult for women facing the law to access their rights, especially the right to a fair trial.

This study aims to analyze the effectiveness of enforcing Article 23 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence in prohibiting *restorative justice* in cases of sexual violence. In addition, this study also evaluates legal protection for victims whose cases are resolved through a non-litigation approach. The results of the study are expected to provide concrete recommendations to strengthen regulations, improve the understanding of law enforcement officers, and ensure that victims receive justice and proper protection.

## **METHOD**

This study uses an empirical legal approach that aims to understand the effectiveness of the implementation of Article 23 of Law No. 12 of 2022 concerning the prohibition of *restorative justice* in cases of sexual violence. This method was chosen to explore field facts from law enforcers, government officials, and the community regarding the implementation of the law. The data used include primary and secondary data. Primary data were obtained through in-depth interviews with key informants, such as

PPA investigators from the Malang City Police, and from the Malang City Social Service P3AP2KB, and other related parties. Meanwhile, secondary data were collected from literature, journals, laws and regulations, and other relevant documents. Data collection techniques were carried out through structured interviews and literature studies. Data analysis used qualitative descriptive methods to identify the effectiveness, obstacles, and solutions in the implementation of Article 23 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence. This study was conducted in the jurisdiction of Malang City to better understand the practice of *restorative justice* and the legal protection provided to victims of sexual violence.

## RESULTS AND DISCUSSION

### ***Effectiveness of Law Enforcement Regarding the Implementation of Article 23 of Law No. 12 of 2022 Concerning Criminal Acts of Sexual Violence, Regarding the Prohibition of Restorative Justice in Cases of Sexual Violence.***

Based on research, Article 23 of Law No. 12 of 2022 which prohibits *restorative justice* in cases of sexual violence has not been fully implemented effectively. This can be seen from cases handled by the Malang City Police, where *restorative justice* is still used as an approach to resolving cases. One example of a case explained by the PPA investigator of the Malang City Police is a case of sexual harassment with an 18-year-old victim who was harassed by a 45-year-old perpetrator until the victim became pregnant (AY, Interview, Malang City Police, Malang, November 14, 2024). The chronology is, the victim was harassed by her friend's parents in her friend's room, the victim finally revealed this incident to the child of a community leader who told her parents, who then helped the victim report it to the Malang City Police. The victim was asked to collect evidence, call witnesses, and undergo a post-mortem examination. In the middle of the investigation, the victim suspected that she was pregnant after undergoing a post-mortem examination. After undergoing the examination, the victim confirmed that she was indeed pregnant. This finding is an important factor in further decisions. The victim withdrew the report for personal reasons, including concerns over the legal process that was considered difficult. Finally, the PPA investigators of the Malang City Police conducted a case conference, and in the agreement, a stop of investigation was carried out for reasons of *restorative justice*. The P3AP2KB Social Service provided psychological and legal assistance, but the victim refused to continue the case. Because the report was withdrawn, the perpetrator was not subject to legal sanctions and remained free.

The basis for the application of *restorative justice* in resolving this case is Perpol No. 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice. This clearly contradicts the provisions contained in Article 23 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, which reads:

"Sexual Violence Crime Cases cannot be resolved outside the judicial process, except for child perpetrators, as regulated in the Law."

The application of *restorative justice* is also supported by Article 18 paragraph (1) of Law Number 2 of 2002 concerning the Republic of Indonesia National Police (Law of the Republic of Indonesia Number 2 of 2002 concerning the Republic of Indonesia National Police) which reads:

"In the public interest, officials of the Republic of Indonesia National Police in carrying

out their duties and authorities may act otherwise according to their own judgment."

This article provides flexibility for police officers to take certain steps, including the application of *restorative justice*, based on the specific situation faced. Thus, the Malang City Police use Perpol No. 8 of 2021 to refer to the criteria for *restorative justice*, such as the existence of a peace agreement between the victim and the perpetrator, as well as consideration of its impact on society. Article 18 of the Police Law also reinforces that *restorative justice steps* can be taken if deemed more appropriate to resolve conflicts and maintain social harmony. However, the use of these two regulations contradicts the prohibition of Article 23 of the Law on Sexual Violence Crimes, which emphasizes that cases of sexual violence, especially those involving adult perpetrators, must be resolved through the legal process to provide a deterrent effect and protect the rights of victims. This creates a regulatory conflict that can reduce consistency in law enforcement and protection of victims of sexual violence.

In addition to the above rules, the implementation of *restorative justice* often refers to Article 12 of the Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigation, which states that in the investigation process, restorative justice can be carried out if the requirements are met (Utomo, 2023):

1. Materials, including:
  - a. Does not cause public unrest or there is no public rejection
  - b. Does not cause social conflict
  - c. There is a statement from all parties involved that they do not object and waive their right to sue before the law.
  - d. Limiting principle:
    - 1). To the perpetrator:
      - a. The level of the perpetrator's guilt is relatively not serious, namely the guilt was intentional, and
      - b. The perpetrator is not a repeat offender
    - 2). In criminal acts in process:
      - a. Investigation, and
      - b. Investigation before the SPDP is sent to the public prosecutor
2. Formal Includes:
  - a. Letter of request for peace from both parties (reporter and reported);
  - b. The statement of peace and settlement of the dispute between the parties involved in the case (the reporter and/or the reporter's family, the reported party and/or the reported party's family and/or representatives of community leaders) is acknowledged by the investigator's superior;
  - c. News program inspection addition party Which litigated after the case has been resolved through restorative justice;
  - d. Recommendation title special case Which agree settlement restorative justice; and
  - e. Perpetrator No object And done in a way voluntary on not quite enough responsibility and compensation.

Regarding the material requirements in Article 5 of Perpol No. 8 of 2021, the criteria include (Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice):

1. Does not cause unrest and/or rejection from the community
2. Does not cause social conflict
3. It has no potential to divide the nation

4. No radicalism and separatism
5. Not a repeat offender based on a court decision
6. Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives.

Meanwhile, the general requirements in the form of formal requirements are regulated in Article 6 of Perpol Number 8 of 2021, including:

1. Peace from both parties, except for narcotics crimes.
2. Fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes

Peace between the two parties is peace between the reporter and the reported party which is proven by the existence of a peace agreement letter signed by the parties. Meanwhile, the fulfillment of the victim's rights and the perpetrator's responsibilities are as follows:

- a. Return goods;
- b. Compensate for losses;

The results of the author's interview with the PPA investigators, regarding the termination of the investigation into the case of sexual harassment and indecent acts handled by the Malang City Police, the reasons are outlined as follows:

1. Basis for Termination of Investigation: *Restorative justice* is applied on the grounds of a peace agreement supported by a peace agreement letter. This is considered in accordance with Article 5 and Article 6 of Perpol No. 8 of 2021, which regulates the material and formal requirements for the application of *restorative justice*.
2. Principle of Social Relationship Restoration: Polres focuses on peaceful resolution to restore the relationship between the perpetrator, victim, and victim's family. However, this ignores the serious nature of sexual violence that should be resolved through legal channels.
3. Pressure from Victims or Families: Authorities often use this Regulation because the victim or the victim's family has filed a request to withdraw the report, claiming that the case has been resolved amicably.

Although Perpol No. 8 of 2021 provides a basis for *restorative justice*, its application to cases of sexual violence conflicts with Article 23 of the Law on Sexual Violence Crimes, which prohibits *restorative justice* for adult perpetrators. This creates a regulatory conflict that impacts the protection of victims' rights and the effectiveness of law enforcement.

**Table 1: Data on Sexual Violence Cases Resolved Using *Restorative Justice*.**

DATA ON CHILD SEXUAL VIOLENCE CASES (CHILD PROTECTION ACT) MALANG CITY					
PERIOD 2021 TO JULY 2024					
No	Unity	Year	Number of Reports	Amount Completion	Information
1.	Malang City Police Department	Year 2021	NIL	NIL	No reports
2.	Malang City Police Department	Year 2022	NIL	NIL	No reports
3.	Malang City Police Department	Year 2023	1	1	<i>Restorative justice</i>

4	Malang City Police Department	July 2024	5	4	2 RJ 2 Fingerprints
<b>Total</b>			6	5	

Data Source: PPA Unit, MALANG CITY POLICE REGENCY 2024

Based on the table above, the results of the study of criminal acts of sexual violence against adult perpetrators with resolution using *restorative justice* have been carried out at the research location, based on the results of the interview with Briptu OV that there has been an increase in cases in 2023 with 1 case resolved with *restorative justice*. One of the cases of sexual violence recorded in 2023 was the case of Sexual Harassment. This case was resolved with *restorative justice*, meaning that the perpetrator and victim reached an agreement without going through the trial process. In July 2024, there were 5 new reports with 4 cases resolved, 2 through *Restorative Justice* and 2 through the investigation process (Briptu OV, Interview, Malang City Police, November 14, 2024).

Effectiveness etymologically comes from the English word *effective* which means right or successful and valid. If concluded from the series of meanings above, it is successful, obeyed and valid. The effectiveness of law enforcement as conceptualized by Lawrence M Friedman (1975) in his book entitled *The Legal system: A social science perspective*. Russell Sage Foundation He said that "*The legal system would be nothing more than all these subsystems put together*" he also said, "*A legal system in actual operation is a complex organism in which structure, substance, and culture interest*"

From the description above, it can be concluded that in the legal system itself there are three subsystems. The subsystems in question are legal substance, legal structure, and legal culture. These three subsystems greatly determine the effectiveness of a law. Factors that influence the effectiveness of the law include the clarity of legal norms, the competence of officers in implementing the rules, the level of public awareness, and the support of supporting facilities such as legal socialization and adequate resources. If referring to the subsystem above in relation to Article 23 of the Law on Sexual Violence, cases related to sexual violence depend on the extent to which officers comply with legal provisions without being influenced by social pressure, and how the community understands the importance of legal channels to protect victims. Without support from all these elements, the law will find it difficult to achieve the desired goal of justice.

Furthermore, from the results of the interview with Mrs. RM from the Malang City Social Service P3AP2KB, she explained the case of sexual violence that occurred in Malang City in 2023, namely a case of sexual harassment that caused the victim to become pregnant, the victim was 18 years old and the perpetrator was 45 years old. This case was handled by the Malang City Police, and offered psychological assistance and legal assistance to the Malang City Social Service P3AP2KB, during the investigation process the victim withdrew the report and finally the resolution of this case was resolved using *restorative justice*. She also argued that it is important to handle cases of sexual violence through legal channels, in accordance with the provisions stipulated in Article 23 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence. This is done to ensure that the legal process not only provides justice to the victim but also creates a deterrent effect for the perpetrator. This opinion emphasizes that resolving cases through family or peace is not enough, because it can ignore the victim's maximum recovery and allow the

perpetrator to repeat his actions. And the importance of educating the community is also emphasized, considering that many people still view sexual violence as an internal problem that can be resolved informally. In fact, the psychological and social impacts on victims, especially children, can be very large and long-lasting (RM, Interview, Social Service P3AP2KB Malang City, Malang, December 24, 2024). This public education is expected to increase awareness of the prohibition of restorative justice in cases of sexual violence and emphasize that this crime is not a trivial matter that can be resolved with just an apology. In addition, he argued that this includes the main objective of enforcing Article 23 of the Law on Sexual Violence, namely ensuring justice and proper recovery for victims.

### ***Legal Protection for Victims of Sexual Violence Resolved Through Restorative Justice***

In the science that studies victims (victimology), in general, if we want to understand the problem of crime, we must first understand the role of the victim that influences the occurrence of crime, the victim who has the status of a passive or active participant in a crime, plays various roles that influence the occurrence of the crime (Sulaeman & Homzah, 2019).

The role in question is the attitude and condition of a person who will become a potential victim or an attitude and condition that can trigger someone to commit a crime. The victim has a functional role in the occurrence of a crime (Yulia, 2013).

The definition of victims also includes the definition of *direct victims of crime* or victims of criminal acts who are direct and indirect victims of criminal acts, both individually and collectively who experience physical, mental, or material suffering, and includes victims of abuse of power (Indah, 2014).

The theory of victimology emphasizes that victims of crime have basic rights that must be fulfilled, including:

1. Right to Justice: Victims must be ensured that they receive justice through legal channels, not a settlement that only prioritizes peace without providing a deterrent effect on the perpetrator.
2. Right to Recovery: Includes physical, psychological and social recovery, so that victims can fully recover from the impact of trauma resulting from sexual violence.
3. Right to Protection: Victims have the right to receive legal assistance and psychological support to prevent intimidation or pressure from the perpetrator or the community.

In the context of handling sexual violence, legal protection provided to victims aims to ensure justice, provide physical and psychological recovery, and ensure that victims' rights are fulfilled. However, the implementation of *restorative justice* often poses major challenges to this goal. Based on the results of interviews with PPA Investigators from the Malang City Police and from the Malang City Social Service P3AP2KB, several main obstacles were found in legal protection for victims of sexual violence.

Based on the data on sexual violence cases above, sexual violence experienced a sharp increase in 2022 with 22 cases of sexual violence, before decreasing slightly to 17 cases in 2023, but increasing again to 21 cases in 2024. The increase in recorded cases of sexual violence, especially the sharp spike in 2022, reflects the importance of more serious handling and firm policies, towards the implementation of the Law on the Crime of Sexual Violence.

In an interview with Mrs. RM from the Malang City Social Service P3AP2KB, one of the cases of sexual violence that caused the victim to become pregnant occurred in 2023,

the Malang City Police offered psychological assistance to the Malang City Social Service P3AP2KB, during the investigation process the victim refused to continue the case and did not want to receive psychological assistance. The Malang City Police finally used *restorative justice* to resolve the sexual harassment case.

Malang City Police, through the Women and Children Protection Unit (PPA), offers legal and psychological assistance to victims, as part of efforts to protect victims. However, in the example case of Sexual Harassment with an 18-year-old and a 15-year-old victim who was molested, explained by Investigator AY, the victim refused to be accompanied because the victim stated that the case had been resolved amicably.

Furthermore, investigator AY explained that legal protection for victims of sexual violence crimes is also carried out during the trial process, which can be seen in the following description (AY, Interview, Malang City Police, Malang, November 14, 2024):

### **1. Before the Court Hearing**

Legal protection for victims of sexual violence is first provided by the police when the victim reports. One form of protection that is greatly needed is medical services or assistance, which includes a medical examination of the victim and the provision of a written report in the form of a *visum et repertum* or medical certificate. This document has legal force as evidence and is very important if the victim wants to continue their case to the further investigation stage by the police. In addition, the police also offer assistance to victims through the Malang City P3AP2KB Social Service to provide psychological and social rehabilitation services. This step aims to help victims overcome the trauma caused by the crime they experienced and ensure they receive comprehensive protection.

### **2. During the Court Hearing**

During the trial process, victims of sexual violence often face severe psychological pressure, especially when they have to testify in front of the perpetrator. Therefore, legal assistance from institutions such as LBH is important so that victims feel calmer and are able to testify well. This assistance aims to help victims overcome their fear, considering that they often still experience severe trauma. In addition, the police also work with the Malang City P3AP2KB Social Service to provide rehabilitation support for victims during the trial process. This step includes psychological services and counseling to help victims deal with the pressure of the trial and ensure that their emotional needs are met during the legal process. This collaborative approach between the police, LBH, and the Social Service aims to provide more holistic legal protection to victims of sexual violence, both before and during the trial.

Furthermore, the Malang City Social Service P3AP2KB also provided information regarding legal protection for victims of sexual violence. One of the main points is that new case handling can be carried out after an official complaint from the victim, the community, or a referral from another institution. The approach applied in each case shows cross-sector involvement, both from law enforcement officers, sub-districts, to non-governmental organizations (NGOs). He also explained that when there is a complaint, the Malang City Social Service P3AP2KB will provide assistance. The assistance offered is legal assistance and psychological assistance. The first is: legal assistance usually starts from explaining the victim's rights, and before further assistance, the victim is given a psychological assessment, an explanation of the legal process, in collaboration with the Malang City Police, alternative solutions, and referrals to legal services. The second is psychological assistance, initial psychological assessment, individual counseling, if necessary, the victim is referred to a psychologist or psychiatrist, then the victim receives long-term assistance.

Looking at the explanation of the assistance provided by the Malang City Police and

the Malang City Social Service P3AP2KB above, based on the above information, the implementation of the rehabilitation program for victims of sexual violence faces several significant obstacles. One of the obstacles is that victims are unwilling to continue the case to the legal realm. This unwillingness is often based on fear of social stigma, pressure from the surrounding environment, or distrust of the justice system. As a result, the psychological or legal assistance services provided often stop at the early stage before the legal process runs optimally.

In addition, the implementation of *Restorative Justice* in this case is considered to ignore the rights of the victim, which should be the main focus in handling cases of sexual violence. The victim in this case experienced severe trauma, and this should be an important consideration in giving approval for the implementation of *Restorative Justice*.

The main criticism of the application of *Restorative Justice* in cases of sexual violence in Malang City is that this approach does not provide a deterrent effect for the perpetrators and has the potential to cause the perpetrators to repeat their crimes. In addition, the application of *Restorative Justice* in cases of sexual violence also has a negative impact on society, where society finds it difficult to accept how cases of sexual harassment can be resolved only through peace. The case of sexual violence against a 15-year-old victim is increasingly complex because it involves children, and in many cases, *Restorative Justice* cannot always be applied to all types of crimes, especially serious crimes such as sexual violence (Sanjaya et al., 2024).

The author also analyzes the regulatory conflict between Article 23 of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, which expressly prohibits *restorative justice* for cases of sexual violence, and other regulations such as Perpol No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, as well as the principle of deliberation contained in Pancasila and Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This conflict creates ambiguity for law enforcement officers, so they tend to choose a quick and practical resolution through *restorative justice*, even though it conflicts with higher regulations.

Sexual violence cases must be processed through legal channels to ensure justice for victims and provide a deterrent effect to perpetrators. Harmonization of regulations between Perpol No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice and the Law on Sexual Violence Crimes is essential to eliminate legal loopholes that allow sexual violence cases to be resolved through *restorative justice mechanisms* that are contrary to the law. In addition, rehabilitation programs must be mandatory for victims, including in cases resolved alternatively, to ensure they receive adequate physical, psychological, and social recovery. The government and social institutions must also actively increase public education regarding the importance of formal legal processes and the negative impacts of family resolution in cases of sexual violence, so that they can support fairer and more consistent law enforcement.

## CONCLUSION

The implementation of regional autonomy law in Indonesia effectively integrates local cultural values, promoting community participation and enhancing policy acceptance at the local level. This study reveals that incorporating local wisdom into governance frameworks strengthens administrative effectiveness and aligns governmental practices with societal norms. However, challenges persist, such as discrepancies between national regulations and regional interpretations, corruption risks, and varying capacities among local officials.

Addressing these challenges requires reinforcing legal regulations, strengthening

supervisory mechanisms, and ensuring clear accountability standards in regional governance. Furthermore, promoting flexible legal approaches that respect cultural diversity is crucial for achieving harmonious governance and equitable social justice. Overall, harmonizing regional autonomy law with local culture contributes significantly to sustainable governance, democratic values, and improved societal welfare.

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