

## LEGAL CERTAINTY OF PROOF THE CRIME OF SEXUAL VIOLENCE AFTER THE PASSAGE OF THE SEXUAL VIOLENCE LAW

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Received 19 May 2023 • Revised 28 May 2023 • Accepted 28 May 2023

### Abstract

This study aims to analyze the proof of the crime of sexual violence after the legalization of the criminal act of sexual violence and the inhibiting factors in proving the crime of sexual violence after the legalization of the criminal act of sexual violence. The type of research used is normative-empirical legal research. This research was conducted in Makassar City, namely at the Makassar Polrestabes, Makassar District Court, LBH APIK Sulsel, UPTD PPA Makassar and the Hasanuddin University Sexual Violence Task Force. The results obtained through library research and interviews were then analyzed using qualitative analysis methods with a normative-empirical approach. 1) evidence of sexual violence prior to the enactment of Law no. 12 of 2022 concerning TPKS, namely proving a crime based on Article 183 of the Criminal Procedure Code that "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence and the judge's conviction" further regulated in Article 184 paragraph (1) of the Criminal Procedure Code that valid evidence, namely: witness statements, expert statements, letters, instructions, and statements of the accused. While the evidence in Law no. 12 regarding TPKS, specifically the testimony of witnesses which does not absolutely have to be two, meaning that one statement from the victim witness plus other evidence and the conviction of the judge is sufficient to prove the occurrence of a crime of sexual violence. 2) The inhibiting factors in proving sexual violence are: first, the legal structure, there is a difference in understanding between law enforcement officers at the Makassar Polrestabes and the Makassar District Attorney regarding proving sexual violence, especially evidence from witness statements, namely investigators still need statements from witnesses other than the victim. The two legal substances, in substance the law on the crime of sexual violence is basically good, but the drawback is that all handling processes are based on the consent of the victims of sexual violence. Third, the legal culture, most of the victims have a responsive eastern culture, such as victims who are afraid to report sexual violence that they have experienced.

**Keywords:** evidence, violence, sexual

## INTRODUCTION

One of the conditions for a country to be declared a rule of law is the fulfillment of human rights guarantees for every citizen. Guarantees for the fulfillment of human rights can be formulated in a country's constitution or in existing laws and regulations. In Indonesia, guarantees for the fulfillment of citizens' human rights are formulated in addition to the 1945 Constitution, specifically the second amendment, as well as in various related laws and regulations. One of the human rights of citizens that must be fulfilled by the state is the right to get a fair settlement of cases. In criminal law, the settlement of a case must fulfill the due process of law, through a court that is free from any influence from anyone. To be able to achieve due process of law properly (Savitri, 2020).

On April 12, 2022, the Bill on the Crime of Sexual Violence was passed into law (hereinafter referred to as the Law on Crime of Sexual Violence) in the Plenary Session of the DPR RI. The ratification of the Law on Sexual Violence has an important meaning in strengthening regulations regarding the treatment and responsibility of the state to prevent, handle cases of sexual violence, and comprehensively recover victims.

The deconstruction of the rights of victims of sexual violence in Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) brings a new direction of guaranteeing the rights of victims of sexual violence (Muhammad, 2022). The rearrangement of the rights of victims of sexual violence in the Law on Crimes of Sexual Violence through the recognition and fulfillment of victims' rights and the state's obligation to fulfill them is a guarantee of legal certainty for justice and remedy for victims.

The right of citizens to be free from threats and violence is a form of protection. However, even though the rights outlined in the 1945 Constitution of the Republic of Indonesia are emphasized as constitutional rights, not all citizens are free from violence. This is experienced by many women and children in Indonesia. This is related to cases of sexual violence that occurred in Indonesia, where the victims are women and children have increased every year. Since 2014, Indonesia has been declared a sexual violence emergency by the National Commission on Women (Komnas Perempuan). Based on Komnas Perempuan's Annual Records in 2019, the most frequent cases of violence were cases of domestic violence (KDRT) (Komnas Perempuan, 2019).

Based on data obtained from Komnas Perempuan that in 2020, the same as the previous year domestic violence/RP (personal domain) contributed 71% of all forms of violence against women (9,637). personal domain with 28% (3,915) in the realm of domestic violence/RP, physical violence ranks first with 3,927 cases (41%), followed by sexual violence with 2,988 cases (31%), psychological violence with 1,658 cases and economic violence with 1,064 cases or or by percentage 11% based on the source of (Human Rights Commission, 2021). In addition to cases of sexual harassment in the personal sphere, there are also many cases of violence experienced by women that occur in the public or community sphere. Based on data from National Women's Commission, 64% of cases of sexual violence were recorded, namely 1,136 cases of sexual abuse and 394 cases of rape.

In addition, during the Covid 19 pandemic there was a significant increase in cases of domestic violence and cases of sexual violence against women and children. Minister of women's empowerment and child protection I Gusti Ayu Bintang revealed that during a period of 1 year, violence against women increased by 1,913 cases to 5,551 cases. During the pandemic, *online* sexual assaults against women are also on the rise. According to the National Commission on Violence Against Women's annual records released on March 5 2021, there were 940 cases of KBGO (online gender-based violence). Even though the scope of interaction during a pandemic is increasingly limited in space, forms of sexual violence still occur in online forms, such as sexy comments, and the distribution of videos and photos without permission. From an online survey of 31 respondents from April 6 to 19 2020, 86 respondents experienced sexual harassment during WFH (*Work From Home*), 68 respondents claimed to have witnessed sexual harassment, and 30 respondents had been victims and witnesses of sexual harassment.

In 2021 there was a significant increase of 80%, namely 3,838 cases, then data from service institutions decreased by 15%, mainly due to a number of services not operating during the Covid 19 pandemic. online gender-based violence with details, complaints to National Women's Commission for 3,838 cases, service agencies for 7,029 cases and BADILAG for 327,629 cases. This violence is an attack on a person's body, sexuality, and gender identity facilitated by digital technology. The above is one of the negative impacts of technological developments. One form of this development is the presence of cyberspace or virtual space that is artificial.

From a criminological point of view, the development of science and technology (Science and Technology) can be said to be a criminogenic factor, namely a factor that causes a person to commit a crime or facilitates the occurrence of a crime. In fields related to decency, various forms of crime and violations of decency also frequently occur. Some of them, namely cases of cyberporn, cybersex,

cyberprostitution to revenge porn. These four types of cases are examples of crimes in cyberspace or cyberspace that occur without having to make physical contact (Nurisman, 2022).

The data shows that online-based violence against women increased by more than 40% of cases during the Covid 19 pandemic. There were 281 cases in 2019 and there have been 659 cases in the last 10 months. Some time ago there was a very interesting case, namely the case of Baiq Nuril who was a victim of sexual violence but instead became a victim of the law in force in Indonesia and there are many other similar cases that have occurred. In addition, there are also many victims of sexual violence who are afraid to report it because they see the effects that will occur if the case is processed.

Sexual violence can occur anywhere and anytime and by anyone, even the perpetrators usually come from close relatives. The state should guarantee a sense of security and provide protection, besides that the state must also be present to provide protection to victims of sexual violence (Hertini, 2022). So far, sexual violence has often occurred to children and women, this is due to the socio-cultural construction, that women and children are in the top positions in society who often experience sexual violence. This way of thinking has been normalized and implemented for centuries so that women do not have autonomy over themselves and are the property of men, even according to ancient common law traditions in England, rape of women is considered a crime against a person's property or property, not crime against a person/body. With regard to the development of an ideal society, of course, is one that is characterized as a modern society in the sense of accepting the development of the times, peace and prosperity or known as civil society. not as a population that has totalitarianism, namely residents who often despise human rights. This is the character of the Indonesian people who uphold human rights, peace, and are open to the times, as well as in democracy changes to regulations or laws, especially those related to sexual violence with the aim of being able to provide legal certainty and justice for victims and also uphold human rights.

In Law no. 12 of 2022 concerning crimes of sexual violence, there are nineteen types of crimes of sexual violence, namely non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, electronic-based sexual violence, rape, obscenity, sexual intercourse with children, violating decency against the will of the victim, pornography involving children, forced prostitution, trafficking in persons for sexual exploitation, domestic sexual violence, money laundering which is the predicate crime constitutes a crime of sexual violence (Hertini, 2022).

So far, what has happened in the handling of cases of sexual violence has not been justice given legal attention to victims of criminal acts, especially in terms of proving the law against criminal acts of sexual violence. Although justice is not the only goal of law (Ali, 2009). This shows that there is a discrepancy between the laws and regulations that apply to the reality that exists in society. So, the researcher wants to examine legal certainty in proving the crime of sexual violence after the passing of the Law on Crime of Sexual Violence and looking at the inhibiting factors in proving the crime of sexual violence after the passing of Law no. 12 of 2022 concerning Crimes of Sexual Violence.

## RESEARCH METHOD

This research is empirical normative research using qualitative research methods that originate from primary data, secondary data and tertiary data. This study aims to describe the evidence for the crime of sexual violence after the legalization of the criminal act of sexual violence along with relevant legal theories. This study uses data collection techniques in the form of interviews (Alijoyo, Wojaya & Jacob, 2021) documentation and questionnaires. Data analysis from this study used a qualitative descriptive method, namely the data obtained was then analyzed and conclusions were drawn in the form of a general understanding that is abstract in nature about the facts (Irwansyah, 2021).

## RESULTS AND DISCUSSION

### Proving the Crime of Sexual Violence After the Ratification of the Law on Crime of Sexual Violence

Sexual violence can occur anywhere, both in public and private places. Sexual violence which is a crime against humanity takes various forms. The form experienced can be verbal with the presence of catcalling terms such as whistling or comments with sexual nuances and non-verbally with marked physical contact. Sexual violence also does not rule out the possibility that it can occur in the campus environment.

In proving the crime of sexual violence before the enactment of law no. 12 of 2022 concerning the crime of sexual violence, the evidence is based on Article 184 paragraph 1 of the Criminal Procedure Code by using five types of evidence, namely:

- a. Witness testimony

Witness evidence is the evidence that plays the most role in the examination of criminal cases. Almost all proof of criminal cases is always based on witness examination. A witness is a person who gives information before a judge on behalf of the accused. Then the witness whose statement was first heard by the judge was the victim who was a witness to Article 160 paragraph (1) letter b of the Criminal Procedure Code.

Formulation of Article 1 point 26 of the Criminal Procedure Code, a witness is "a person who can provide information for the purposes of investigation, prosecution and trial regarding a criminal case that he himself heard about, saw for himself, and experienced for himself. Based on this formulation, the witness statements that must be disclosed before the court hearing are:

- 1) What he heard himself, not the results of stories or the results of hearing from other people. Witnesses personally must hear directly about criminal events or events related to these criminal events.
- 2) What he saw for himself, the incident was actually witnessed directly with his own eyes by the witness, either in its entirety or in a series, fragmentation of the criminal events being examined.
- 3) Those who experience it themselves, in connection with the case being investigated, are usually victims and become the main witnesses of the criminal event in question. Article 160 paragraph (1) letter b of the Criminal Procedure Code states that the first thing that is heard is the victim's witness.
- 4) Supported by the sources and reasons for that knowledge, in relation to the events, circumstances, events heard, seen, and or experienced. Each element of the information must be tested for truth. Between the statements of witnesses and their sources must be completely consistent with one another.

In terms of value and strength of evidence, aside from the things that a witness must prove in court, witnesses must also meet the requirements for a witness to be valid, namely:

1. formal terms
  - a) Witnesses must take an oath or promise Article 160 Paragraph (3) of the Criminal Procedure Code formulates "before giving a statement, witnesses are obliged to take an oath or promise according to the way of their respective religions, that they will give true information and nothing other than the truth".
  - b) Witnesses must be adults, this is related to Article 171 of the Criminal Procedure Code which stipulates those children under the age of 15 or not married, may give testimony but may not take an oath. Even though Article 160 paragraph (3) of the Criminal Procedure Code requires an oath or promise. Witness testimony from someone who is not sworn in or has no power as legal evidence.
  - c) Witnesses are not mentally ill or mentally ill as stated in Article 177 of the Criminal Procedure Code point b, considering that they cannot sometimes have good memories. So no oath or promise can be taken in giving information. Their statements can only be used as a guide, as they apply to minors.
2. Material requirements

The material requirements refer to Article 1 point 27 of the Criminal Procedure Code and Article 185 paragraph (1) of the Criminal Procedure Code, the following is an explanation, so that it can be interpreted that:

- a) Any statement by a witness other than what he himself heard in a criminal event that occurred or what he saw or experienced, the information given beyond what he heard, saw or happened, cannot be assessed and used as evidence.
  - b) Testimonium de audite or witness statements obtained as a result of observations from other people cannot be used as valid evidence.
  - c) The opinion or fiction that the witness obtained as a result of his thoughts is not a statement from the witness Article 185 paragraph (5) of the Criminal Procedure Code (Sukarna, 2016).
- b. Expert statement

Expert testimony or verklaringen van een deskundige/expect testimony is information given by someone who has special expertise on what is needed to clarify a case for the purposes of examination (Article 1 number 28 of the Criminal Procedure Code).

According to M. Yahya Harahap:

"The difference between the testimony of a witness and an expert is that the testimony of an expert is that the testimony of a witness regarding matters experienced by the witness himself (eigen waarneming), while the testimony of an expert is regarding an appreciation of things that have been real exist and draw conclusions from those things.

The Criminal Procedure Code itself does not provide a specific explanation of what is meant by expert testimony. Article 186 of the Criminal Procedure Code states that an expert is what an expert is

declared at trial, so this article does not answer who is called an expert and what is expert testimony. Even though there is no clear definition and definition of what is meant, the Criminal Procedure Code stipulates expert testimony as valid evidence (Rozi, 2018).

c. Letter

According to Sudikno Mertokusumo, written evidence or letters are anything that contains punctuation marks that aim to convey the contents of one's heart or thoughts that are used as evidence.

Letters that become legal evidence are made under an oath of office or confirmed by oath. Referring to the Criminal Code, letters that become legal evidence are:

- 1) minutes and other letters in an official form made by the authorized public official or made before him, which contain information about events or circumstances heard, seen or experienced by him himself, accompanied by clear and firm reasons for said statement;
- 2) a letter made according to the provisions of laws and regulations or a letter made by an official regarding matters included in the management for which he is responsible and intended for proving a matter or a situation;
- 3) a statement from an expert containing an opinion based on his expertise regarding a matter or a situation that has been officially requested from him;
- 4) another letter which can only be valid if it has something to do with the contents of other means of proof.

d. Instruction

A clue is an act, event or circumstance, which due to its correspondence, either between one person and another, or with the crime itself, indicates that a crime has occurred and the accused is the perpetrator. The requirements for evidence of guidance are:

- 1) Have conformity with each other for the actions that occur;
- 2) The circumstances of the act are related to each other with the crime that occurred;
- 3) Based on the judge's observations both from the statement of the defendant and witnesses at trial.

How to obtain clue evidence, according to Article 188 paragraph (2) of the Criminal Procedure Code limits the judge's authority in obtaining clue evidence, that instructions can only be obtained from witness statements, letters, statements of the accused. This source can be used in a limited way to construct directive evidence. Based on these three pieces of evidence, the judge can process evidence and from these three pieces of evidence a conformity of actions, events or circumstances can be sought and realized. Article 311 states that the presence of a signal can only be proven:

- 1) By witnesses;
- 2) By letters;
- 3) By the self-examination of the judge;
- 4) By the testimony of his own testimony even outside the court.

In principle, all evidence has the same value and importance, but in practice it still depends on the criminal incident in question. If the witness testimony or other evidence is not sufficient to prove the guilt of the accused, then the directive evidence is an effective means so that it can meet the minimum limit of proof formulated in Article 183 of the Criminal Procedure Code.

The nature of the strength of the clue evidence is the same as the evidence of witness statements, expert statements, and letters. Whereas the nature of the strength of evidence against evidence has the nature of independent evidence, namely:

- 1) The judge is not bound by the truth of the agreement embodied by the instructions; therefore, the judge is free to evaluate it and use it as an effort to prove.
- 2) Instructions as evidence cannot stand alone to prove the defendant's guilt, but are still bound by the principle of the minimum limit of evidence. Therefore, in order for a clue to have sufficient evidentiary value it must be supported by at least one other piece of evidence (Sukarna, 2016).

e. Defendant's statement

The defendant's statement is the last piece of evidence in Article 184 paragraph (1) of the Criminal Procedure Code. The statement of the accused in the context of evidence is generally almost the same as confessions evidence. However, these are two terms that have different meanings. The Criminal Procedure Code itself defines the defendant's statement as what the defendant conveyed in court regarding the actions that the defendant committed or what the defendant did or what the defendant himself knew and what the defendant himself experienced.

In principle, not all of the defendant's statements contain evidentiary value. The statement of the defendant which contains valid evidentiary value according to Article 189 of the Criminal Procedure Code is as follows:

- 1) Statements must be stated before the court hearing

- 2) Fill in the statement regarding the actions committed by the defendant, everything he knows, and the events that he himself experienced.
- 3) This information can only be used against himself. That is, regarding whether the information given by the defendant burdened or lightened him, then this only applies to himself, may not be used and does not apply to burden or lighten other people or other defendants in the case being examined.
- 4) The statement of the defendant is not sufficient to prove that the defendant is guilty of committing an act as charged against him, but must be accompanied by other evidence.

Starting from the goal of realizing the true truth, the law cannot assess the defendant's confession or statement as evidence that has perfect and binding evidentiary value. Referring to this, the value of the strength of evidence of the defendant's confession or statement is as follows:

- 1) The nature of the value of the strength of evidence is independent  
This means that the judge is not bound by the strength value contained in the defendant's evidence. The judge is free to assess the truth contained therein. Judges can accept or reject evidence by giving reasons.
- 2) Must meet the minimum threshold of proof, meaning that the statement of the accused alone is not sufficient to prove that he is guilty of committing the act he is charged with, but must be accompanied by other evidence. this is in line with the minimum limit of proof stipulated in Article 183 of the Criminal Procedure Code.
- 3) Must comply with the principle of judge conviction  
This means that even though the guilt of the defendant has been proven in accordance with the principle of the minimum limit of proof, it still has to be added to the judge's conviction that the defendant is guilty of committing the crime as charged against him (Imron, Iqbal, 2019).

Meanwhile, in Law No. 12 of 2022 concerning Crimes of Sexual Violence are listed in Article 24, namely:

- (1) Legal evidence in proving the Crime of Sexual Violence consists of:
  - a. evidence as referred to in the criminal procedural law;
  - b. other evidence in the form of electronic information and/or electronic documents as stipulated in the provisions of laws and regulations;  
A concrete example of electronic information evidence is in the form of recorded files on chats between victims and perpetrators of sexual violence.
  - c. evidence used to commit a crime or as a result of a crime of sexual violence and/or objects or items related to the crime.  
A concrete example of evidence is the underwear used by the victim of the crime of sexual violence and also the sheets used by the victim when the crime of sexual violence occurred.
- (2) Including evidence of witness statements, namely the results of examinations of witnesses and/or victims at the investigation stage through electronic recording.
- (3) Including documentary evidence, namely:
  - a. certificate of clinical psychologist and/or psychiatrist/psychiatric specialist;
  - b. medical records;
  - c. forensic examination results; d, and/or
  - d. Bank account checking results.

In Article 25 it is explained that:

- (1) The testimony of witnesses and/or victims is sufficient to prove that the defendant is guilty if it is accompanied by 1 (one) other valid evidence and the judge obtains confidence that a crime has actually been committed and it is the defendant who is guilty
- (2) The family of the accused may provide testimony as a witness under oath/pledge, without the consent of the accused.
- (3) In the event that a witness's statement can only be obtained from a victim, a witness's statement that is not made under oath/pledge, or a witness's statement obtained from another person, the strength of evidence can be supported by information obtained from:
  - a. A person who can provide information relating to a case of the Crime of Sexual Violence even though he has not heard of it, saw it himself, and has not experienced it himself, as long as that person's statement relates to the crime;
  - b. Witnesses whose statements stand alone but are related to each other in such a way that they can justify the existence of a certain event or situation and their statements can be used as legal evidence both in terms of qualifications as witness statements and instructions; and/or
  - c. Experts who make documentary evidence and/or experts who support proving a crime.

A concrete example of an expert in the form of an expert presented from the field of forensics who has issued a letter in the form of a visum et repertum from a victim of sexual violence which has become evidence of a certificate of a crime of sexual violence.

(4) Statements of Witnesses and/or Victims with Disabilities have the same legal force as statements of Witnesses and/or Victims who are not with Disabilities.

(5) The statements of Witnesses and/or Victims as referred to in paragraph (a) must be supported by a personal assessment as stipulated in the laws and regulations regarding proper accommodation for Persons with Disabilities in the judicial process (Undang-undang No. 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual, 2022).

Based on data obtained from the Legal Aid Institute of the Indonesian Women's Association for Justice in South Sulawesi (hereinafter abbreviated as LBH APIK Sulsel), it is known that the number of crimes of sexual violence in Makassar City is quite high, where recorded from 2020 to 2023, namely:

**Table 1.** The Number of Crimes at The Legal Aid Institute of the Indonesian Women's Association for Justice in South Sulawesi

No.	Year	Reported	Stopped	Finished
1.	2020	15	-	15
2.	2021	16	4	1
3.	2022	19	1	2
4.	2023	1	-	1

Source: The Legal Aid Institute of the Indonesian Women's Association for Justice in South Sulawesi

Seeing the high number of reports regarding criminal acts of sexual violence, it certainly gives a high responsibility to LBH APIK Sulsel in providing assistance to victims of sexual violence crimes in Makassar City. Furthermore, the following concerns the evidence for the crime of sexual violence after the legalization of the law on the criminal act of sexual violence at LBH APIK Sulsel:

Based on the results of the researcher's interview with the Chairperson of LBH APIK Sulsel on behalf of Rosmiati Sain, SH stated that:

"Basically, proving the crime of sexual violence must meet two valid pieces of evidence plus the judge's conviction, which is valid evidence in Article 184 paragraph 2 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions and statements of the accused. Regarding one victim witness statement, it is enough to prove that the crime of sexual violence has occurred plus one other piece of evidence and the judge's conviction, basically there is legal certainty in it because sexual violence cases are personal cases of someone who does not need a lot of witness testimony, but this is not implemented in the police, investigators continue to ask for statements from other witnesses besides the victim, this may be because the police have not fully understand the evidence in the law on the crime of sexual violence.

Based on data obtained from the Makassar City Police (hereinafter abbreviated as Polrestabes Makassar), it is known that the number of crimes of sexual violence in Makassar City increases every year, where it was recorded from 2022 after the passing of the Law on Crimes against Sexual Violence until 2023 namely:

**Table 2.** Number of Crimes in Makassar City Police in 2022

No.	NAME OF CASE CATEGORIZE D AS SEXUAL VIOLENCE IN 2022	MAY	JUNE	JUL Y	AUG	SEPT	OCT	NOV	DEC	STOP PED IN 2022	FINIS HED IN 2023
2.	domestic violence	9	7	3	4	4	11	3	4		
3.	Adult lewdness	4	1	2	8	2	4	1	-	11	173
4.	Child abuse	8	15	7	10	4	18	7	9		
5.	Child violence	4	3	-	5	2	21	5	5		
6.	Sexual violence	-	-	-	-	-	4	-	3		

**Table 3.** Number of Crimes in Makassar City Police in 2022

No.	NAME OF CASE CATEGORIZED AS SEXUAL VIOLENCE IN 2023	JANUARY	FEBRUARY	MARCH	APRIL	MAY	STOP PED	FINIS HED

1.	Rape	-	1	-	-	-		
2.	domestic violence	7	9	4	11	-		
3.	Adult lewdness	5	5	4	-	-		
4.	Child abuse	8	7	9	4	7	9	149
5.	Child violence	6	5	9	23	18		
6.	Sexual violence	2	1	2	5	6		
7.								

Source: Makassar City Police

Seeing the high number of reports regarding criminal acts of sexual violence, it certainly gives a high responsibility to the police and other law enforcers to minimize the occurrence of criminal acts of sexual violence in Makassar City. Furthermore, the following concerns the evidence for the crime of sexual violence after the legalization of the law on the crime of sexual violence at the Makassar Polrestabes:

Based on the results of the researcher's interview with investigators at the Makassar Polrestabes on behalf of stating that:

"Proof of the Crime of Sexual Violence basically must meet two valid pieces of evidence plus the judge's conviction, which is valid evidence in Article 184 paragraph 2 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions and statements of the accused. Regarding one statement from the witness-victim, it is enough to prove that the crime of sexual violence has occurred plus one other piece of evidence and the conviction of the judge. 12 of 2022, due to differences of opinion between the prosecutor and the legislator, this is to further strengthen the truth of the testimony of the victim's witness and also to synchronize it with other evidence.

Based on data obtained by researchers from the Sexual Violence Task Force at Hasanuddin University, Makassar, it is known that the Sexual Violence Task Force was formed in 2020, so the number of cases of criminal acts of sexual violence was quite low, where those recorded from 2022 until now are:

**Table 4.** The Number of Crimes of Sexual Violence in The Hasanuddin University Sexual Violence Task Force in 2022 Until 2023.

No.	CASE SEXUAL in 2022-2023	REPORTED	PROCESSING	FINISHED
1.	Sexual violence	4	1	3

Source: Hasanuddin University Makassar Sexual Violence Task Force

Further based the results of interviews with researchers with members of the Hasanuddin University Sexual Violence Task Force on behalf of Qaiatul Muallima stated that:

"For specific matters in proving the crime of sexual violence in law no. 12 of 2022 concerning the crime of sexual violence, where the testimony of a witness does not absolutely have to be two, but only one statement from a victim witness is enough to prove the crime, but it needs to be underlined that the intent of this matter is stated in Article 25 paragraph (1) that one witness can be considered as valid evidence but must be accompanied by one other piece of evidence supporting the testimony of said witness plus the conviction of the judge. Therefore, there must be synchronization between witness testimony and valid evidence.

**Obstacle Factors in Proving the Crime of Sexual Violence After the Passage of the Law on Crime of Sexual Violence**

**1. Legal Structure**

According to Lawrence Friedman, the elements of the legal system consist of a legal structure, legal substance and legal culture (Setiawan, Muhadar & Heryani, 2018). In efforts to prevent and deal with criminal acts of sexual violence, these three factors must mutually support one another in order to achieve the objectives of law No. 12 of 2022 namely preventing all forms of sexual violence, handling, protecting and recovering victims, creating an environment without sexual violence, and ensuring the non-repetition of sexual violence.

The legal factor that influences the proving of a crime of sexual violence is the legal structure, in which there are different understandings between law enforcers regarding the proof of a crime of sexual violence as stipulated in Law no. 12 Year 2022.

In addition to differences in understanding, based on the Makassar Polrestabes Investigator's statement, that the process of handling criminal acts of sexual violence that had entered the trial stage, there were several cases that were stopped because the victim withdrew the complaint.

This condition often hampers the law enforcement process, even though victims are still suffering from the crime of sexual violence, both physical and psychological suffering. There is also the influence of encouragement from family or relatives or even the perpetrator who urges the victim to stop the case, often leading to regret because the victim experiences a similar incident again and the perpetrator has not fully received a deterrent effect for the crime that has been committed. This is evident from the record of LBH APIK Sulsel, that often they suddenly withdraw their reports.

For cases that are resolved criminally, there are many obstacles faced. Until now, the police still need the testimony of other witnesses apart from the testimony of the victim witness. This is also an obstacle in the process of proving a crime of sexual violence. In this regard, it will certainly be difficult to present other witnesses besides the victim because usually the crime of sexual violence occurs in a closed room such as a bedroom and there are only victims and perpetrators in the incident. Even if someone finds out, they will be afraid to testify.

Arrangements for criminal acts of sexual violence are specifically regulated in Law no. 12 of 2022 concerning Crimes of Sexual Violence as a complaint offense has a positive and negative impact on efforts to prevent all forms of sexual violence. The positive impact is that the victim can consider by looking at the impact that will be caused to the victim if the case is continued or not, holding a complaint offense is to protect the aggrieved party and provide an opportunity for interested parties to resolve cases that apply in society. However, the negative is if peace is actually carried out because of pressure or encouragement from outside the victims of sexual violence. So that the mediation that occurs is only peace on paper, however, sexual violence may recur. This is even more so for those who are victims of sexual violence in the form of psychological violence, who sometimes do not realize that they have actually been hurt mentally and psychologically.

The existence of repeated reports that lead to peace, should be given serious action by law enforcement officials. Even though basically the law on the crime of sexual violence does not provide any restrictions regarding revocation of reports by the same victim, taking into account the weak conditions of victims (especially women, children and disabilities) law enforcement officials should continue to handle a case to the court stage. , because basically this crime of sexual violence should not end in restorative justice. This was done with the consideration that the peace efforts being carried out were actually suggested by external parties or it could also be due to the victim's fear.

In connection with proving the crime of sexual violence, there are still inhibiting factors that the researchers found, and this is the main factor in proving sexual violence, namely that there are often victims who do not want to be subject to a post mortem et repertum.

Based on the results of interviews with investigators at the Makassar Polrestabes on behalf of Rahmatia, stated that:

"In the process of proving the crime of sexual violence, the inhibiting factor in this proof is the lack of witness testimony that was presented, and there were several victims who did not want to undergo a post mortem et repertum on the grounds that there was no post mortem fee even though it was given free of charge by the police. the post mortem results take a long time even though the results are out the day after the post mortem, and also feel embarrassed and afraid if you have to show your body to the specialist doctor in question even though the expert doctor is not likely to do anything unnatural to the victim's body.

Furthermore, based on the results of an interview with the Chairperson of LBH APIK Sulsel on behalf of Rosmiati Sain, SH stated that:

"In the process of proving the crime of sexual violence, the inhibiting factor in this proof is the lack of witness testimony presented, while the police still need statements from witnesses other than the victim, while the obstacle in resolving cases of criminal acts of sexual violence is that there are the distance or geographical location is different between the victim and the LBH APIK Sulsel location, making it difficult to handle the case, in addition to our limited human resources and limited budget, this has become an obstacle for LBH APIK Sulsel to reach victims."

Furthermore, based on the results of interviews with members of the Hasanuddin University Makassar Sexual Violence Task Force at Hasanuddin University Makassar on behalf of Qaiatul Muallima stated that:

"The inhibiting factor during the Sexual Violence Task Force's handling of cases of sexual harassment in the campus environment is because the crime of sexual violence is a complaint offense, so handling can be carried out if there is the consent of the victim and reporting the case (except for prevention and other policies without having to make a complaint or report). Meanwhile, victims sometimes feel ashamed if their disgrace is exposed or known to the public, even though the handling of these cases clearly adheres to the principles of the best interests of the victim and the confidentiality of the victim's identity. Therefore, the inhibiting factor is the fear and distrust of the victim in handling the case.

The author is of the opinion that this condition is the condition that most hinders the process of proving the crime of sexual violence. However, this cannot be blamed either because it is in accordance with the mandate of the law on the crime of sexual violence, that the government is obliged to seek recovery for victims of sexual violence. In order to anticipate this incident, law enforcement officials must be more careful when handling sexual violence.

## 2. Legal Substance

The substance is composed of substantive rules and also about how institutions should behave (Soge, 2021). The definition of a crime of sexual violence, as stated in Article 1 point 1 of Law No. 12 of 2022 concerning Crimes of Sexual Violence are all acts that fulfill the elements of a crime 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.

In Indonesia, legally and formally, this provision came into effect on May 9, 2022. The mission of this law is as an effort, an endeavor to prevent all forms of sexual violence, both physical and psychological. With this provision, it means that the state can try to prevent the occurrence of sexual violence anywhere, and follow up on perpetrators of sexual violence, and protect victims of sexual violence.

As a law that requires special arrangements, apart from containing arrangements for criminal sanctions, this law also regulates procedural law, the state's obligation to provide protection to victims of sexual violence. Thus, it can be said that this provision is a very important legal breakthrough for efforts to uphold human rights, particularly the protection of those who have been harmed by acts of sexual violence.

With regard to the regulation of sexual violence, the law on the crime of sexual violence has clearly included it in the provisions of Article 4 paragraph 1 which states that the form of sexual violence is non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery and electronic-based sexual violence. The next article 4 paragraph 2 the form of sexual violence is rape, obscenity, intercourse with a child, obscenity against children, and/or sexual exploitation against Children, acts that violate decency contrary to the will of the Victim, pornography involving children or pornography which explicitly contains violence and sexual exploitation, forced prostitution, intended crime of trafficking in persons for sexual exploitation, sexual violence within the household, money laundering crime origin is a Violent Crime sexual and other criminal acts that are expressly stated as a Crime of Sexual Violence as stipulated in the regulatory provisions legislation.

Likewise with the aspect of proof for the crime of sexual violence, where the law on the crime of sexual violence has clearly stated the types of valid evidence in Article 24 and Article 25.

Regarding the substantial weaknesses in the law on the crime of sexual violence, in principle everything has been regulated clearly and straightforwardly starting from formal law and material law, but there is a lack of socialization regarding the substance of the law on crime of sexual violence so that there are still law enforcement officers who not fully implement the law.

Based on the results of an interview with the Chairperson of LBH APIK Sulsel at LBH APIK Sulsel on behalf of Rosmiati Sain, SH stated that:

"If substantially Law No. 12 of 2022 concerning Crimes of Sexual Violence is sufficient because several articles also clearly regulate sexual violence, only the problem is how to implement the law which is still difficult to use.

Furthermore, based on the results of interviews with Makassar Polrestabes investigators, at the Makassar Polrestabes on behalf of Rahmatia stated that:

"Regarding the substance of Law No. 12 of 2022 concerning Crimes of Sexual Violence basically there is nothing wrong, maybe it still needs to be socialized again to the public, law enforcement officials, institutions that monitor children and women, and so on.

Furthermore, based on the results of interviews with members of the Hasanuddin University Sexual Violence Task Force at Hasanuddin University Makassar stated that:

"In my opinion, the substance of Law No. 12 of 2022 concerning Crimes of Sexual Violence is already good, the only drawback is that all handling processes are based on the consent of the victim. So it is rather difficult to deal with cases that apply in general and victims feel embarrassed to be handled".

The author is of the opinion that this condition is a condition that also becomes an obstacle to the process of proving a crime of sexual violence. However, this is not entirely due to a lack of socialization regarding the substance of the law on sexual violence, but also due to the actions of law enforcement officials who are less assertive in handling the case, which allows this case to be resolved in restorative justice even though this should not be done.

### 3. Legal Culture

Legal culture it is the element of social attitude and value. Behavior depends on judgement about which options are useful or correct. Legal culture refers to those parts of general culture customs, opinions, ways of doing and thinking that bend social forces toward or away from the law ((Soge, 2021). The number of cases of criminal acts of sexual violence has increased even though special regulations have been made regarding criminal acts of sexual violence as stipulated in Law no. 12 of 2022 concerning Crimes of Sexual Violence, but not much is processed in criminal justice.

Based on the data the researchers obtained, many cases were reported at the police level, LBH APIK Sulsel, UPTD PPA Makassar and the Hasanuddin University Sexual Violence Task Force, but many were resolved because the reporter withdrew his report and resolved it with Restorative Justice. This is due to the weak condition of women, children and people with disabilities who are very concerned about the fear and shame that their shame will be exposed to the public as well as pressure from the family to stop the case.

However, this will never disappear from their shadow, there is no human freedom because of this bond but it is only stored in the heart, which victims of sexual violence do not realize that this is actually psychological violence which of course cannot be tolerated, but must also be there is remedy for victims of sexual violence. Efforts to prove sexual violence often encounter obstacles in terms of legal culture, so that handling tends to not be prioritized.

Based on the results of interviews with Makassar Polrestabes investigators at Makassar Polrestabes on behalf of Rahmiati stated that:

"Cases of sexual violence reported by victims are often not followed up because victims are unsure or do not understand that what is being reported is a crime. Likewise, cases that have been processed by the police are often withdrawn for various reasons, for example because the victim feels that he has forgiven the perpetrator, there is still a feeling of love between the victim and the perpetrator, the victim who is pregnant out of wedlock is promised to be married by the perpetrator, so the case is that sexual violence is considered a shameful disgrace for victims of sexual violence. This matter.

Furthermore, based on the results of an interview with the Chairperson of LBH APIK Sulsel at LBH APIK Sulsel on behalf of Rosmiati Sain, SH stated that:

"The inhibiting factor in resolving cases of sexual violence is that the victim suddenly withdraws his report in the middle of the process. This has become the legal culture of Indonesian society, especially Makassar City, which has an attitude of easily forgiving someone's mistakes even though the mistake is fatal for the victim himself, with this Victims cannot free themselves from violence which results in serious health impacts if the victim does not report it as a result of surrender and does not receive recovery. In addition to the psychological wounds caused that twist the victim's mind such as insomnia, anxiety, stress, self-harm, dissociative, panic attacks, eating and sleeping disorders, ingredients have the potential to use narcotics which of course will interfere with the victim's activities.

Furthermore, based on the results of interviews with members of the Hasanuddin University Makassar Sexual Violence Task Force, at Hasanuddin University Makassar on behalf of Qaiatul Muallima stated that:

"Regarding the inhibiting factors in solving sexual violence cases at Hasanuddin University, where we are in the eastern region which has a responsive culture which sometimes contradicts the facts seen. For example, as an element of the campus we see sexual violence but victims feel reluctant to report it so we can only resolve it independently and even then, there is no definite authority because everything is based on the consent of victims of sexual violence."

In this case, the researcher hopes that the Law on Crime of Sexual Violence can make victims aware that sexual violence must be reported to protect victims. Of course, active socialization must be carried out by all relevant agencies to change the cultural paradigm of people who are easy to forgive to obey the rules of law in force.

### CONCLUSION

Proof of criminal acts of sexual violence prior to the enactment of Law no. 12 of 2022 concerning Crimes of Sexual Violence, namely proving a crime based on Article 183 of the Criminal Procedure Code that "A judge may not impose a sentence on someone unless with at least two valid pieces of evidence and the judge's conviction" which is further regulated in Article 184 paragraph (1) Criminal Procedure Code that valid evidence includes: witness statements, expert statements, letters, instructions, and statements of the accused. While the evidence in Law no. 12 concerning Crimes of Sexual Violence, especially in the testimony of witnesses that do not absolutely have to be two, in the sense that only one statement from the victim witnesses plus other evidence and the judge's conviction is deemed sufficient to prove the occurrence of a crime of sexual violence. This is because

the law on the crime of sexual violence neglects the general principle of *unus testis nullus testis*, which means one witness is not a witness. So that there is a difference between proving the crime of sexual violence before and after the enactment of Law no. 12 of 2022 concerning Crimes of Sexual Violence. Even though in reality, law enforcement officials in proving the crime of sexual violence after the passing of Law no. 12 of 2022 concerning Crimes of Sexual Violence, still requires testimony from other witnesses apart from the testimony of the victims themselves.

The inhibiting factors in proving the crime of sexual violence include: first, the legal structure, that is, there are differences in understanding among law enforcement officials, both at the Makassar City Police and at the Makassar District Attorney regarding proving the crime of sexual violence, especially evidence of witness testimony, where investigators still need other witnesses besides the victim, this is because there is an order from the Public Prosecutor to present witnesses other than the victim, so the rules regarding proving the crime of sexual violence are not fully implemented. The two legal substances, namely substantially the law on the crime of sexual violence are basically good, but the drawback is that all handling processes are based on the consent of the victim so that it becomes difficult to deal with cases that apply generally and there is a lack of socialization to law enforcement officials regarding the substance of the law. -law no. 12 of 2022 concerning Crimes of Sexual Violence. The three legal cultures, namely that most victims have a responsive eastern culture such as victims are afraid to report sexual violence they have experienced and easily forgive someone for their mistakes even if it is fatal for them, so this becomes an obstacle for law enforcement in proving the crime of sexual violence.

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