



Justice for Survivors of Sexual Violence: A Synergy of Positive Law and Islamic Legal Principles

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Abstract. Sexual violence is a multidimensional problem that threatens the dignity, safety, and future of survivors. The incidence of such cases continues to increase, both in domestic and public spheres, with women and children as the dominant victims. This condition reflects the weak protection mechanisms for survivors and the lack of justice-oriented legal responses. This article aims to analyze legal protection for survivors of sexual violence through the synergy of Indonesia's positive law particularly Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) with Islamic legal values grounded in the *maqāṣid al-sharī'ah*. The research employs normative legal methods with philosophical and comparative approaches. The findings reveal that although the UU TPKS has provided a comprehensive protection framework, its implementation in North Sumatra remains hindered by cultural factors, social stigma, and institutional limitations. From the perspective of Islamic law, the principles of *hiḍ al-naḥs* (protection of life), *hiḍ al-'irdh* (protection of dignity), and justice (*'adl*) provide moral legitimacy and normative foundations to strengthen survivor-centered justice. This study concludes that integrating positive law and Islamic values can establish a more holistic, responsive, and just model of protection for survivors of sexual violence in North Sumatra.

Keywords: Justice, sexual violence, survivors, positive law, Islamic legal principles.

1 Introduction

Sexual violence is a multidimensional problem that threatens the dignity, safety, and future of survivors. Its impact extends beyond the physical realm, encompassing psychological, social, and economic dimensions ranging from mental health disorders, school dropouts or loss of economic opportunities, to prolonged social stigmatization [1].

Indonesia faces significant challenges in addressing sexual violence, ranging from underreporting due to stigma to legal mechanisms that are not yet fully responsive to the needs of survivors. The enactment of Act No. 12 of 2022 on Sexual Violence Crimes marks an important step forward, yet it raises a crucial question: to what extent can this legal framework be effectively implemented, particularly in regional contexts such as North Sumatra, which has its own unique socio-cultural dynamics?

The National Commission on Violence Against Women's annual reports show a surge in reports of violence against women, with new patterns such as cybersexual violence and an increase in reports involving children. The commission has collected thousands of reports, describing the "tip of the iceberg" phenomenon; many cases are not officially recorded, so reporting figures represent only a fraction of the reality.

This data underscores the urgency of strengthening protection mechanisms and legal responses that favor victims [2].

A similar pattern has emerged in North Sumatra, but with local characteristics that require analysis, related to the increase in cases of violence against women and children in recent years, as well as the need for improved support services and access to justice at the district/city level. According to reports from service agencies, challenges remain in the availability of integrated services, the capacity of officials, and cultural barriers and stigma that prevent victims from reporting and seeking redress.

Concrete cases in North Sumatra, such as several incidents of sexual violence against children in Langkat that received national media attention, and other cases involving educational settings and families, illustrate the fragility of prevention and response mechanisms. These incidents not only sparked public outrage but also exposed weaknesses in investigations, litigation processes, and the fulfillment of victims' rights to recovery (psychosocial, medical, and compensation). These cases have become a driving force for demands for the enforcement of the Act No. 12 of 2022 at the regional level, ensuring a more rapid, gender-sensitive, and victim-centered response.

The problem statement in this paper describes that the Act No. 12 of 2022 represents a crucial legislative advancement because it broadens the scope of sexual acts, including non-physical and online acts, provides space for restitution and victim recovery, and affirms the principle of victims' rights. However, in its implementation, gaps remain between the norms in the law and practice on the ground, including: 1) low public awareness of victims' rights, 2) limited resources of service institutions, 3) cultural barriers such as norms of shame and stigma, and 4) the capacity of law enforcement officers who are not fully trained in handling sexual cases in a trauma-informed manner.

Based on an Islamic legal perspective, the framework of *maqāṣid al-sharī'ah* (objectives of sharia), particularly the principles of *hifz al-naḥs* (protection of life), *hifz al-'irdh* (protection of honor), and the principle of *'adl* (justice), has incorporated moral legitimacy and sources of normative values to strengthen victim protection. Integrating these values with positive law (such as the Act No. 12 of 2022) has the potential to produce a more holistic protection model: requiring not only sanctions for perpetrators but also reparations that respect the dignity of victims and minimize retraumatization in the legal process. Comparative studies show that the synergy of religious values and human rights norms can increase social acceptance of protection mechanisms when operationalized in an inclusive and evidence-based manner [3].

Based on the description above, this study focuses on analyzing how the synergy between Indonesian positive law (the TPKS Law) and Islamic legal values (*maqāṣid*) can strengthen victim protection in North Sumatra. This focus is important because: (1) the urgent need to improve implementation at the regional level; (2) the strong Islamic socio-cultural context in some communities that influences attitudes towards victims and perpetrators; and (3) the normative opportunity to create a more just and

sustainable response mechanism. Thus, this study seeks to build an analytical framework that integrates Islamic law with positive law in the context of protecting victims of sexual violence. This study is expected to provide theoretical contributions to the development of legal science, as well as practical recommendations for improving victim protection policies in Indonesia, particularly in North Sumatra. These obstacles are evident in delays in handling cases, the low number of reports resulting in criminal proceedings, and cases ending in non-litigation settlements that do not always favor the victims.

The research questions are: 1) How does the synergy between positive law and Islamic values provide justice for survivors of sexual violence? The purpose of the study is to analyze how the synergy between positive law and Islamic values can provide justice for victims of sexual violence.

This research is important because there is a gap in studies on the integration of Islamic law into Indonesia's national legal framework regarding the protection of female victims of sexual violence. Several theories of legal development and the theory of *maqasid sharia* offer a relevant conceptual framework for analyzing how Islamic legal values can strengthen the national legal system in providing more effective protection for victims [4].

2 Research Method

This research uses the normative juridical law method, which analyzes secondary data and uses a statute approach because this paper deals with various legal rules [5]. The research adopts a **normative legal research method (doctrinal research)** that emphasizes the study of legal norms and principles concerning the protection of survivors of sexual violence. This paper explains how the integration of positive law and Islamic values can form a more holistic, responsive, and equitable protection model for victims of sexual violence, especially in North Sumatra. Through normative research and a legislative approach by collecting literature and materials from the media, and explaining the principles of *maqasid sharia*. To complete the data, interviews were conducted with institutions that handle sexual violence cases in Medan. The results of the interviews were coded using the NVivo R1 application. The method consists of the following elements:

2.1 Approaches

There are approaches that have been used for this research such as: 1) statutory approach which is Examining Act No. 12 of 2022 and related Indonesian legal instruments, 2) philosophical approach such as exploring concepts of justice and protection through Islamic legal principles (*maqāṣid al-sharī'ah: hifz al-naḥs, hifz al-'irdh, 'adl*), 3) case approach such as reviewing sexual violence cases in North Sumatra to assess the gap between normative law and practice, and 4) comparative approach which is to compare Indonesian positive law, Islamic legal values, and relevant international standards.

2.2 Data Sources

The primary sources are UU TPKS, Criminal Code provisions, and Islamic legal texts, while the secondary sources are recent academic works—books, Scopus-indexed journals, etc., and the tertiary sources are legal dictionaries, encyclopedias, and reference materials.

2.3 Analysis Technique

The data are processed using qualitative legal analysis that is descriptive (explaining norms), analytical (assessing gaps and challenges), and prescriptive (offering integrative solutions between positive law and Islamic legal values).

3 Findings

3.1 The Synergy Between Positive Law and Islamic Values to Provide Justice for Victims of Sexual Violence

Protection to provide justice for women victims of violence is a condition that cannot stand alone because justice, as a part of the law, accumulates reactions that provide stimuli to the conditions surrounding the facts that are closely related to the environment in which the incident occurred. Justice as a value is relative and dependent on the conditions, so that justice is a biological metabolism in the blood or the value of the law itself. Justice is relative, depending on the stimulus surrounding the facts being tried, because justice is something that is closely related to the breadth of human life. Without justice, life will actually die. It is the primary task of law enforcement to uphold justice so that life does not feel dead. Justice is inherent in humans; it has a metabolism that flows through all aspects of legal cases, making them alive and worthy of trial [6].

Justice is the foundation upon which law is established, and therefore, the law should provide justice for all people. Justice is the goal of all people, including women as victims of sexual violence. Therefore, during the judicial process, the state is obligated to provide access for women victims of sexual violence to justice. This access is part of the state's efforts to achieve its goal of protecting its citizens [7].

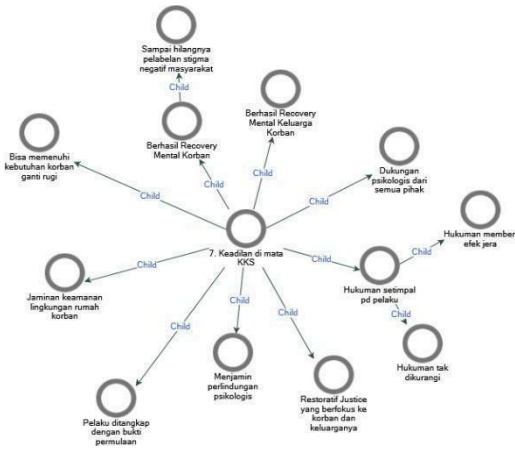


Fig. 1. Coding NVivo R1 Justice for Victims.

The results of the interview with the source explained that providing justice for female victims of sexual violence includes 1) Giving appropriate punishment to the perpetrator, namely, punishment that can provide a deterrent effect and punishment that is not reduced. Namely repressive action against perpetrators of sexual violence. 2) Recovery or providing mental recovery for the victim and their family after the sexual violence experienced by the victim. Of course, it is not easy to restore the victim's mental state to its original state due to the traumatic burden they feel. 3) providing psychological assistance to victims and their families who experience trauma after sexual violence. 4) Allowing restorative justice that focuses on the victim and their family, in the form of compensation without ignoring punishment for the perpetrator. 5) Perpetrators are immediately arrested with initial evidence, so that it does not take a long time for the perpetrator to escape the clutches of the law, because in several cases handled by stakeholders, the perpetrators have fled. 6) Guaranteeing a safe, victim-friendly environment, where the companion truly takes the victim's perspective, protects and meets their needs. 7) Meeting the victim's needs in the form of compensation in the form of restitution and/or compensation.

Strategic steps are needed to utilize the categories of justice contained in Islamic teachings and those found at the sociological level. This strategic step involves integrating the ideal categories of justice according to Islamic teachings and based on societal understanding to build a holistic understanding of justice within the state's legal system. This integration includes balancing orientations. Not only is the legal system offender-oriented, but it also balances the interests of the perpetrator and his family, the victim and his family, the state and society, and includes the perpetrator's accountability to God. All of this is expected to merge in a single judge's decision that formally has coercive and binding force. Thus, the formalistic concept of justice adopted by state law will merge with the category of substantial justice. The category of substantial justice is expected to inspire formal justice in both the formulation and implementation of law enforcement [8].

Protecting female victims of sexual violence through the application of the theory of "kulliyat al-khams" (protection of the law) is crucial. This means that legal protection for female victims of sexual violence must be based on these five aspects: *hifdzu ad deen* (the principle of religion), *hifdzu an nafs* (the basic self), *hifdzu al nasl* (the basic understanding of the mind), *hifdzu al aqli* (the rational mind), and *hifdzu al mal* (the necessary social needs). Protection for female victims of sexual violence falls under the category of *dharuriyat* (necessary needs) because the suffering experienced by victims after sexual violence is deeply ingrained and has systemic consequences [9].

The Role of Maqāṣid in Strengthening Victims' Rights: 1) The principle of *ḥifẓ al-nafs* provides the basis for victims' rights to physical and non-physical protection (including psychological trauma) and to obtain redress. 2) The principle of *ḥifẓ al-irdh* provides the basis for victims' rights to a good name, honor, and protection against social stigma. 3) The principle of *‘adl*: ensures procedural and substantive justice, fair punishment for perpetrators, restitution, and restoration of victims' rights [10].

The maqāṣid approach offers a normative map that can link the sharia's objectives of protecting life, mind, offspring, and honor with the objectives of the law. For example, the regulation of restitution and victim compensation can be seen as aligned with the concept of *diyat/ta'wīd* in Islamic jurisprudence, which places responsibility for the victim's losses on the individual. However, several practical challenges arise: differences in terminology (e.g., the concept of honor in local social contexts), social resistance to the criminalization of certain behaviors, and the need for strong evidence in criminal proceedings. Modern criminal justice systems require codified forensic procedures and witness protection to minimize victim retraumatization and maximize the likelihood of just punishment for perpetrators.

Substantially, the Act no. 12 of 2022 is in line with the goals of maqāṣid, including *ḥifẓ al-dīn* (maintenance of religion), *ḥifẓ al-nafs* (life), *ḥifẓ al-irdh* (honor), and others. The moral values in this law include protection for victims, including those who are non-physical and online. The Act No. 12 of 2022 has regulated changes in the form of an expanded definition of sexual violence, explicit recognition of victims' rights, and a restitution mechanism. Its provisions affirm the right to physical, psychological, social, and economic recovery. This aligns with the maqāṣid al-sharī'ah (the protection of life, mind, offspring, and honor). In the Islamic jurisprudence tradition, sexual violence is categorized as coercive *zina* (adultery) or a crime that requires *ta'zīr* sanctions in addition to *diyat* (pecuniary damages). However, applying these traditional sanctions requires adaptation to the context of the modern positive legal system to ensure that victims' procedural justice rights are maintained.

The maqāṣid approach offers a normative framework that can link the sharia objectives of protecting life, mind, offspring, and honor with those of Act No. 12 of 2022. For example, the regulation of restitution and victim compensation can be seen as aligned with the concept of *diyat/ta'wīd* in Islamic jurisprudence, which places

responsibility for the victim's losses on the individual. However, there are several practical challenges: differences in terminology (e.g., the concept of honor in local social contexts), social resistance to criminalizing certain behaviors, and the need for strong evidence in criminal proceedings. Modern criminal justice systems require codified forensic procedures and witness protection to minimize victim retraumatization and maximize the likelihood of just punishment for perpetrators.

Protection regulated by national law includes, among other things, physical, psychological, legal, psychosocial rehabilitation, restitution, and/or compensation relevant to the *maqasid al-sharia* (the Islamic principles of Islamic law). *Hifdzu an nafs*, or the protection of the soul, is paramount because a healthy soul produces a healthy mind. Through a healthy mind and mental state (*hifdzu al aqli*), victims can continue their education and fulfill their role as servants of God (*hifdzu ad deen*), establish or maintain a family (*hifdzu an nasl*), and regain economic independence to meet their living needs (*hifdzu al mal*). Recovering the soul requires material resources, so the restitution due to the victim must be provided.

In line with positive law, Islam also emphasizes preventive protection. Guarantees for women's basic human rights can be found in numerous Islamic literature that protect women from harassment, through the implementation of preventative rules and policies, such as the implementation of Islamic rules specifically aimed at maintaining women's honor and dignity; regulations regarding the relationship between men and women, as mentioned in *Surah Al-Isra'*, verse 32, which warns against adultery; the commandment for men to lower their gaze (*Surah An-Nur*, verse 30); the commandment for women to lower their gaze (*Surah An-Nur*, verse 31); the command to guard their private parts (*Surah Al-Mu'minin*, verses 5-7); and the prohibition on forcing slaves into prostitution (*Surah An-Nur*, verse 33).

Preventive efforts can be implemented through family, community, and school interventions, including moral and character education, as well as the principles of *mubadalah* (good deeds) and *ma'ruf* (righteousness and good deeds). This will sensitize the community to all forms of sexual violence. This will create legally aware families that apply the principles of *mubadalah* (good deeds) in their lives, thereby realizing justice and well-being.

3.2 Comprehensive, Responsive, and Fair Handling of Victims of Sexual Violence

Despite the enactment of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, in practice, the handling of female victims remains challenging. Female victims of sexual violence are often even subjected to defamation charges due to the failure to obtain evidence to support their testimony. In some countries, this falls under the category of *qadzaf*, or false accusation of adultery, as is the case in Aceh [11].

This situation is exacerbated by the societal stigma that blames the victim, as if the woman is the one who instigated the rape. The unequal relations between men and women in society persist, with women often viewed as sources of slander and perceived as seducers of men's sexual desires. This leads to a strong tendency in society to blame female rape victims.

Regarding the victimization and retributization experienced by the victims as described above, this is in accordance with the opinions of the informants who directly handled cases of sexual violence as expressed through interviews, which were coded in the following NVivo R1 format:

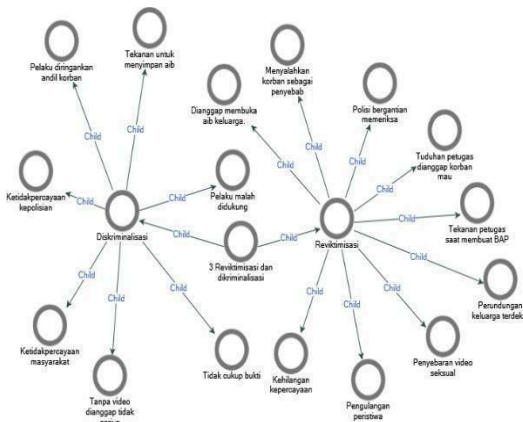


Fig. 2. Coading Nvivo R1 Discrimination and Criminalization of Victims.

The victim experienced re-victimization because the police took turns questioning her when making a report, accusations from police officers that the victim was willing or willing, pressure from officers when making a report, bullying from the closest family such as the victim is no longer a virgin, distribution of sexual videos, repetition of events, loss of trust, the perpetrator even seemed to be supported by the family and community, the victim was blamed because it was considered to have become a disgrace to the family, the victim was blamed for triggering the sexual violence, even the victim was pressured to remain silent and the sexual violence she experienced because it was a disgrace. Hence, she had to keep the disgrace tightly under wraps.

This situation is exacerbated by the societal stigma that blames the victim, as if the woman were the instigator of the rape. Inequality in the relationship between men and women in society persists, with women often viewed as sources of slander and perceived as tempting men's sexual desires, leading to a strong tendency in society to blame female victims of rape [12].

Based on the maqasid al sharia developed by Syatibi, preserving human life and saving people are considered urgent necessities. Protection, which in Arabic is termed muhafazhah, is a necessity for the objectives of sharia (al-maqasid asy-syariah), interpreting sharia from the term protection should be broader. In his

comprehensive book explaining *Maqasid al Syariah*, Jasser Auda expands on the meaning of *muhafazhah*, not only in the context of ritual *di'in* (*ubudiyah mahdhah*), but also in the context of social matters (*muamalat duniawiyat*) [13]. Similarly, saving female victims of sexual violence is also considered a necessary necessity.

Islamic values (*maqāṣid*) are crucial for providing moral legitimacy and social norms for protecting victims. The integration of legal norms and Islamic values enables the creation of more meaningful, rather than merely formal, justice. A holistic justice model focused on victim-centeredness, recovery, and non-discrimination is a comprehensive approach to justice for victims. Victim-centered care encompasses not only punishment for the perpetrator but also empowers victims to recover and regain a sense of empowerment.

Therefore, protecting female victims of sexual violence in obtaining justice must continue to be a special concern for the state, in accordance with the state's goal of protecting all its citizens, including women who are vulnerable to becoming victims of sexual violence. The ultimate goal of protecting female victims of sexual violence is to ensure a good, humane life free from violence. Therefore, the implementation of preventive, repressive, and rehabilitative protection for victims of sexual violence is necessary.

Recovery involves returning the victim to their pre-victim condition, both physically, mentally, and socially. Once the victim has returned to their original condition, the Quran recommends that the perpetrator engage in "*islah*." *Islah* is an action or effort to create reconciliation and repair. *Islah* is crucial due to the physical, mental, and economic hardships the victim has experienced since becoming a victim. When undertaking the recovery process, reconciliation and repair must be initiated immediately after the victim's recovery to address both material and non-material losses [14].

Safe house placement is limited to 14 days, while life-threatening actions may be terminated upon completion of the investigation. The government's limited facilities for safe houses are certainly not sufficient to fully meet victims' needs. For example, the case of AZZ, a 14-year-old victim of child sexual abuse, was handled by the Aisiyyah North Sumatra Legal Aid Post (*Posbakum Aisiyyah*), in collaboration with the Medan City Women and Child Protection Unit (*UPTD PPA*), the Ministry of Social Affairs, and the Witness and Victim Protection Agency (*LPSK*) to provide legal assistance, safe houses, and other necessary assistance to the victim.

The availability of safe houses is essential for victims, providing them with security and psychological support, allowing them to recover and regain their sense of empowerment. This is especially true for victims who have to give birth at a young age without a husband or family, which is certainly not easy. Therefore, synergy between government agencies is crucial for protecting victims and ensuring they feel safe and secure.

For example, the *LPSK* (Women's Empowerment and Child Protection Agency) and the Women's Empowerment Agency (*PPA*), through the Medan City

Technical Implementation Unit (UPTD), can collaborate with the Social Services Agency to empower victims by providing skills to restore their economic condition. It can be argued that the punishments imposed on perpetrators have not met the desires and needs of victims, as the victims' suffering in the form of material and immaterial losses is often overlooked. The synergistic role of the government through the Women's and Children's Empowerment Agency, LPSK, schools, families, and all elements of society is urgently needed to protect victims until they give birth and care for and raise their children, while still attending school and having a decent life.

A protection such as a women's crisis center (WCC) is a home that can accommodate and protect victims from threats from perpetrators and restore the victim's unstable condition. Safe houses are expected to help victims regain a sense of empowerment. Currently, the safe house referral mechanism for victims is carried out by the UPT PPA of the Medan City P3APMP2KB Service, based on Ministerial Regulation No. 2 of 2022 concerning Standards for Women and Children Protection Services. In principle, safe houses or temporary shelters are provided to victims based on the level of threat to the victim. They are implemented for a maximum of 14 days, after which they will be referred to other institutions that operate safe houses, such as LPSK. This short time span has not been effective in protecting victims from threats from perpetrators and in the victim's recovery.

Thus, the *maqashid asy syariah* includes protection of religion, protection of life, protection of reason, protection of offspring and protection of property obtained by the victim, so that the victim does not feel alone. The role of LPSK and the PPA Service through the UPTD of Medan City, for example, can synergize with the Social Service to empower victims by providing skills that can restore the victim's economic condition. It can be said that the punishment that has been imposed on the perpetrator has not met the desires and needs of the victim, because the victim's suffering in the form of material and immaterial losses is often ignored. The role of synergy between the government through the Women and Children Empowerment Service, LPSK, schools, families and all elements of society is urgent to provide protection to victims until they give birth and care for and raise their children, while still attending school and having a decent life. Thus, the *maqashid asy syariah* includes protection of religion, protection of life, protection of descendants, protection of intellect and protection of property obtained by the victim.

The right of victims to continue attending school must also be guaranteed by the educational sector, including the school and the education office. Schools may not prohibit students who are victims of sexual violence from dropping out of school, as education is a right that must be provided. This will enable Islam's goal of protecting the mind (*hifzu al aqli*) to be realized.

Another aspect that must be provided to female victims of sexual violence is spiritual guidance to restore their spirituality and overcome the life uncertainties experienced after the violence, so that they remain confident in the greatness and power of Allah SWT over them. Self-healing, through spiritual guidance that leads to drawing closer to Allah, is part of protecting victims from falling into sin. This is certainly in line with the *maqasid al-shariah* (the principle of Islamic law), *hifdzu ad*

deen (protecting religion). Victims need religious motivation to prevent them from engaging in other actions such as self-blame, self-harm, suicide, or even prostitution.

A strategic policy for protecting female victims of sexual violence that meets the values of justice is implementing the TPSK Law, which is relevant to Islamic law, including prevention, handling, protection, and recovery for victims. Protection that prioritizes values that exist and grow in Indonesian society, taking into account women's experiences, includes preventive, repressive, and rehabilitative protection. Legal changes involve not only the substance of the law alone, but also the structure and culture of law that are based on spiritual mental development that fulfills the values of essential justice unique to women through to recovery. Therefore, protection from upstream to downstream must be carried out until the victim and their family have fully recovered and regained their power, including psychosocial recovery and economic empowerment carried out for the continuation of their lives, as well as granting the right to compensation in the form of restitution/compensation. Thus, the protection of female victims can fulfill the principle of *maqasid ash sharia* as the goal of Islamic law.

4 Conclusion

Protecting female victims of sexual violence in North Sumatra requires a combination of strong legal framework, moral legitimacy from Islamic legal tradition, and adequate service capacity. The *maqāṣid al-sharī'ah* approach provides a normative framework that can help reduce social resistance to progressive regulations if articulated wisely and contextually. However, the structural challenges of patriarchy, access to services, and institutional coordination must be addressed through integrated policies. The implementation of the Act No. 12 of 2022 has so far demonstrated substantive progress, but achieving the goal of victim recovery requires resource investment, improved governance, and sustained multisectoral collaboration.

Integrating Indonesian positive law through the TPKS Law with Islamic legal principles can create a more holistic model of protection. The legal orientation is not only offender-oriented but also victim-centered, prioritizing the interests of victims. This synergy paves the way for a fairer, more responsive, and contextualized justice system that addresses the socio-cultural dynamics of North Sumatra.

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