

Legal Feminization: Dissecting Gender Inequality in Judges' Decisions in Sexual Violence Cases

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Entered : May 12, 2025
Accepted : June 16, 2025

Revised : June 05, 2025
Published : July 18, 2025

ABSTRACT

This study examines the implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) in criminal justice practice with a focus on gender inequality in legal reasoning and judges' juridical arguments. The TPKS Law exists as a progressive legal instrument that emphasizes a victim-based approach and the principle of non-discrimination, as well as accommodates previously unrecognized forms of non-physical sexual violence. However, the effectiveness of these norms is still constrained by judicial practices that are often based on conventional legal paradigms and patriarchal biases. The normative juridical approach is used to analyze positive legal norms, court decisions, and feminist legal concepts, in order to assess the extent to which the principles of the TPKS Law are internalized by judges. The results of the study show that many decisions still question the credibility of victims and ignore the psychosocial dimension of sexual violence, thus perpetuating the practice of victimization. The low sensitivity of gender in legal considerations shows the need for legal feminization as an effort for epistemological and structural transformation in the judicial system. These findings underscore the importance of gender-sensitive judicial training and criminal procedure law reform so that the law can function as a means of substantive justice. This study recommends the integration of legal feminist values as a normative and interpretive framework in sexual violence cases.

Keywords: Feminization Of Law; Gender Inequality; Sexual Violence

INTRODUCTION

Judicial power in the criminal justice system should play a role as an instrument of substantive justice enforcement that is sensitive to the sociological context of the victim, especially in cases of sexual violence. However, the reality in the courtroom shows that the juridical considerations of judges are still heavily influenced by patriarchal perspectives that are rooted in social and legal constructions. When judges judge cases of sexual violence using the criteria of morality or the victim's behavior as a basis for consideration, the law loses its objectivity and becomes a tool for reproducing gender

inequality. This phenomenon shows the urgency of legal feminization, namely the cultivation of a gender justice perspective in all stages of criminal justice.¹

Law No. 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) has provided a more progressive legal framework than the previous legal regime, because it explicitly recognizes forms of sexual violence that have so far escaped legal attention, such as forced contraception, sexual exploitation, and sexual slavery. However, the presence of such regulations does not automatically guarantee that law enforcement officials, including judges, will adopt a victim-friendly approach. Many court decisions still show a disconnect between legal norms and their application, where the proof of sexual violence cases remains burdened by a narrow reading of the evidence and testimony of the victim.

In the framework of legal epistemology, legal feminization views law as not neutral and value-free, but rather as a product of social construction that is full of ideology, including patriarchal ideology. This is important to affirm because many rulings in sexual violence cases still reflect the dominance of masculine interpretations that place women as passive objects in the legal narrative. In many cases, the victim is actually blamed for being perceived as "luring" the perpetrator through certain clothing or behavior, thus distracting from the unequal power relations that are at the heart of sexual violence. This understanding is in line with the feminist theory of law put forward by Catharine MacKinnon, that traditional law often fails to recognize systemically institutionalized forms of sexual power.

Gender inequality in judges' consideration is also due to the lack of progressive legal education that incorporates gender perspectives as part of the core curriculum.² Juridical reasoning is often centered on the logic of legal formalism and is unable to reach the psychosocial complexities of victims of sexual violence. The TPKS Law has actually emphasized a victim-centered approach, where the evidentiary process no longer has to be based on conventional evidence alone, but also takes into account the psychological impact and expert testimony. However, the application of these norms will be futile if judges are still fixated on a conservative legalistic paradigm and lack understanding of the social context surrounding sexual crimes.

Criticism of the criminal justice system in the context of sexual violence is not new. Decisions that tend to be detrimental to victims show that there is still structural resistance to changing legal paradigms. Legal feminization demands changes not only in normative, but also cultural and structural aspects.³ For example, the TPKS Law expressly contains the principle of respect for the dignity and dignity of victims, as well as the state's obligation to provide recovery. However, this principle is often not reflected in the verdicts, either in the form of light sentences against the perpetrators or in the absence of restitution and proper rehabilitation services for the victim.

Women's representation in the judiciary is an important aspect that must be a concern in the discourse on legal feminization. Women's representation is not just about

¹ Gleason, S. A., Jones, J. J., & McBean, J. R. (2019). The role of gender norms in judicial decision-making at the US Supreme Court: The case of male and female justices. *American Politics Research*, 47(3), 494-529.

² Saputra, E. (2025). Mendesain Ulang Keadilan: Reformasi Hukum Perceraian dalam Sistem Peradilan Agama. *JIMU: Jurnal Ilmiah Multidisipliner*, 3(03), 1688-1707.

³ Susiana, S. (2019). Pelindungan hak pekerja perempuan dalam perspektif feminisme. *Aspirasi: Jurnal Masalah-Masalah Sosial*, 8(2), 207-221.

numbers, but about having different perspectives and experiences in assessing cases.⁴ Women judges who are trained in gender issues are more likely to understand the dynamics of sexual violence from the perspective of the victim. The TPKS Law implicitly opens up space for women's participation through integrated service mechanisms, but its influence on judicial structures, including the Supreme Court, is still very limited. Therefore, affirmative policies are needed to encourage the recruitment and training of gender-responsive judges.

A legal paradigm that is not responsive to gender inequality has the potential to result in the victimization in the judicial process. Victims who have experienced the trauma of sexual violence are actually hurt again through questions or statements that doubt their credibility.⁵ The TPKS Law has tried to break this chain by emphasizing the importance of protection during legal proceedings, including non-discriminatory treatment.⁶ However, substantive changes will only occur if judicial actors adopt the principles of non-discrimination and respect for the victim's real experience in judicial practice.

In closing, legal feminization is not just a theoretical concept, but a practical necessity in realizing justice that is more inclusive and victim-perspectived. In the context of sexual violence, masculine legal approaches have been shown to fail to adequately protect the rights of victims. The TPKS Law is an important first step in building a more gender-equitable legal framework, but its effectiveness is largely determined by the extent to which law enforcement officials, especially judges, are able to internalize feminist values in the law enforcement process. This transformation requires the collective efforts of the state, legal education institutions, civil society organizations, and judicial actors themselves

METHOD

This research uses a normative juridical approach, which is a legal research method that relies on the study of applicable positive legal norms, both in the form of laws and regulations, legal doctrines, and relevant legal principles. The main focus in this approach is to analyze legal norms in relation to the application and interpretation of the law by judicial institutions, particularly in cases of sexual violence that show gender inequality in judges' decisions.

Normative research aims to examine and understand how the law should apply (*das sollen*), not how the law is practiced in empirical reality (*das sein*), so that the entire analysis process relies on primary and secondary legal materials that are textual and conceptual.⁷

As explained by Peter Mahmud Marzuki, normative legal research is a method that focuses on the study of legal materials as the main object of study, by interpreting and constructing applicable laws to answer certain legal issues.⁸ According to Marzuki, this

⁴ Tasane, R., & Manuputty, F. (2024). Partisipasi Perempuan dalam Politik: Antara Representasi dan Kebijakan di Kota Ambon. *Populis: Jurnal Ilmu Sosial dan Ilmu Politik*, 18(2), 185-205.

⁵ Nadia, B. U. A. (2022). *Adult romantic attachment pada wanita dewasa awal yang mengalami childhood sexual abuse* (Doctoral dissertation, Universitas Islam Negeri Maulana Malik Ibrahim).

⁶ Phahlevy, R. R., Purwaningsih, S. B., & Faizin, M. (2024). ADVOKASI DAN MANIFESTASI KEILMUAN PROFETIK Potret Gerak Advokasi Muhammadiyah dalam Politik Kenegaraan di Indonesia. *Umsida Press*, 1-141.

⁷ Novea Elysa Wardhani, Sepriano, and Reni Sinta Yani, *Metodologi Penelitian Bidang Hukum* (Jambi: PT. Sonpedia Publishing Indonesia., 2025).

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2011).

approach is prescriptive because it aims not only to describe the law, but also to provide normative arguments for the validity of a legal action or act in the legal system adopted.⁹ Meanwhile, Soerjono Soekanto and Sri Mamudji stated that normative legal research includes research on legal principles, legal systematics, legal synchronization, legal history, and comparative law.¹⁰

The main object of study in this study is Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law), which is a progressive legal instrument in answering the protection needs of victims of sexual violence. This research will systematically examine the provisions in the TPKS Law related to victim protection, evidence in sexual violence cases, victim-based approaches, and non-discrimination principles, as well as examine how these norms are internalized in judicial practice.

In addition, this study also analyzes the judges' decisions in sexual violence cases, which were purposively selected to see the patterns of juridical considerations that show the existence of gender bias or resistance to feminist approaches in law. The study of this decision was carried out using the content analysis method, in order to identify the form of inequality in legal interpretation of the victim, and to assess the extent to which the judge referred to the principles in the TPKS Law.

The legal sources used include primary legal sources, namely laws and regulations such as the TPKS Law, the Criminal Code, the Criminal Code, and international legal instruments related to the protection of women (e.g. CEDAW), as well as secondary legal sources in the form of legal literature, academic journals, research results, and the opinions of feminist legal experts. The analysis is also strengthened by a conceptual approach to feminist theory in law, which highlights the way the law works in reproducing the inequality of power relations between men and women.

This method is relevant because it is able to provide a critical examination of normative and structural limitations in the legal system, as well as offer a construction of legal thinking that is more responsive to gender-based substantive justice. Through a normative juridical approach, this research not only aims to explain written norms, but also evaluate the *gap* between law in the book and law in action, especially in the context of the realization of justice for victims of sexual violence.

DISCUSSION

1. Juridical Analysis of the Implementation of the TPKS Law in the Decision of Judges in Sexual Violence Cases

The implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) in criminal justice practice is the main indicator of the success of legal reform in dealing with sexual violence based on the victim's perspective. Juridically, the TPKS Law has provided a progressive normative framework by affirming the rights of victims, expanding the definition of sexual violence beyond physical aspects, and regulating a mechanism of proof that accommodates trauma and an imbalance in power relations between perpetrators and victims. However, the effectiveness of the

⁹ Mahlil Adriaman et al., *Pengantar Metode Penelitian Ilmu Hukum* (Padang: Yayasan Tri Edukasi Ilmiah, 2024).

¹⁰ Rangga Suganda, "Metode Pendekatan Yuridis Dalam Memahami Sistem Penyelesaian Sengketa Ekonomi Syariah," *Jurnal Ilmiah Ekonomi Islam* 8, no. 3 (2022): 2859, <https://doi.org/10.29040/jiei.v8i3.6485>.

implementation of these norms is largely determined by how the judge translates them into juridical arguments in court decisions.

One of the crucial aspects of this analysis is the consistency of the application of the principle of victim protection. The TPKS Law explicitly prioritizes a victim-centered approach, which requires law enforcement officials, including judges, to consider the vulnerability, trauma, and rights of victims in all stages of the judicial process.¹¹ In practice, a number of rulings still show a tendency to question the credibility of victims excessively, which has implications for the neglect of the principle of non-revictimization. This raises juridical problems related to the inconsistency in the application of the principles of protection and restorative justice as stipulated in Article 4 and Article 5 of the TPKS Law.

Another dimension that needs to be studied in depth is the recognition of non-physical forms of sexual violence contained in the TPKS Law, such as online-based violence, sexual exploitation, or verbal sexual violence.¹² In some rulings, it can be seen that judges are still limited in interpreting the criminal elements of such non-physical violence, especially when the evidence presented does not conform to the conventional evidentiary model. In fact, the TPKS Law has provided legal space for a more adaptive and contextual approach to proof through the recognition of digital evidence, psychological expert witnesses, and victim statements as the main evidence.

In the context of the evidentiary mechanism, the TPKS Law stipulates that the victim's testimony can stand as valid evidence, even in the absence of witnesses or other physical evidence, as long as the judge believes that the truth is based on rational and empathetic considerations.¹³ However, in judicial practice, not a few judges are still fixated on the formal approach of proof as stipulated in the Criminal Code, which requires a minimum of two conventional evidence. This shows that there is a gap between the progressive norms in the TPKS Law and procedural law praxis that has not been fully reformed.

Another aspect that is the focus of this analysis is whether the judge has applied a non-discriminatory and gender-sensitive approach as instructed in the considerations and general principles of the TPKS Law. Several rulings studies show that gender bias still appears in the form of normative assumptions about the victim's behavior, moral judgment, and the elimination of the perspective of inequality in power relations between victims and perpetrators.¹⁴ This reflects the need to increase the capacity of judges in understanding the concept of gender equality and sexual violence as a form of human rights violation, not just a matter of individual morality.

This juridical analysis also reveals that the implementation of the TPKS Law has not been fully synchronized with other legal instruments, both the Criminal Code and the Criminal Code, which in some cases still use a legalistic and androcentric approach. This

¹¹ Jafar, S. M., & Wahyudi, W. (2025). Analisis Yuridis Terhadap Penegakan Hukum Kasus Pelecehan Seksual Oleh Tenaga Medis Di Indonesia. *Dialog Legal: Jurnal Syariah, Jurisprudensi Dan Tata Negara*, 1(2), 60-67

¹² Aditya, R., Karauwan, D. E. S., & Junaedy, A. (2024). Implikasi Undang-Undang Tindak Pidana Kekerasan Seksual (UU TPKS) Terhadap Proses Peradilan Pidana Di Indonesia. *Kabillah: Journal of Social Community*, 9(2), 22-31.

¹³ Nova, E., & Elda, E. (2022). Implikasi Yuridis Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual Terhadap Korban Dalam Sistem Peradilan Pidana Terpadu Yang Berkeadilan Gender. *UNES Law Review*, 5(2), 564-579.

¹⁴ Malonda, E. G. A. (2024). TINJAUAN YURIDIS PERLINDUNGAN TERHADAP PRIA YANG MENGALAMI PELECEHAN SEKSUAL. *LEX PRIVATUM*, 13(4).

inconsistency affects the interpretation of judges, especially in cases involving violent elements of non-physical power relations and patriarchal structural influences. Therefore, it is necessary to integrate a systematic interpretation that refers to the spirit of the TPKS Law as a *lex specialis* against sexual violence.¹⁵

On the other hand, there are also progressive rulings that can be used as a jurisprudential precedent, where judges expressly use a victim-based approach, consider trauma and social context, and reject gender-biased justification excuses. This shows that the transformation of the criminal law paradigm towards sexual violence is possible through the internalization of substantive justice values and respect for the dignity of victims in judicial practice.

Thus, the juridical analysis of the implementation of the TPKS Law in the judge's decision is not only concerned with compliance with positive legal norms, but also touches on the philosophical and sociological aspects of the law itself. Evaluation of judges' decisions needs to be directed at the extent to which the law is used as an instrument of social transformation to eliminate gender-based violence, not just as a formal repressive mechanism.¹⁶ Therefore, judicial reform in sexual violence cases must include judicial education with a gender perspective, revision of the criminal procedure law, and the development of progressive jurisprudence that is in favor of the victim.

2. Gender Inequality in Legal Reasoning and Juridical Arguments of Judges

Refers to a condition in which court rulings show a tendency to reproduce patriarchal values to the detriment of victims, especially women in cases of sexual violence. In this context, law functions not only as a normative instrument, but also as an ideological field that contains and reproduces social power relations. When judges formulate legal considerations, they not only interpret norms textually, but also bring internalized social values, including biased gender stereotypes.

Patriarchal bias in judges' decisions is often reflected through argumentation strategies that implicitly or explicitly cast doubt on the credibility of the victim. Practices such as victim blaming in which the victim's behavior, clothing, or personal relationships are used as the basis for reducing the perpetrator's responsibility demonstrate the failure of the judicial institution to understand the complexity of power relations in sexual violence. In many cases, judges also tend to question the morality of victims or place a disproportionate burden of proof on victims, contrary to the principles of substantive justice and the protection of human rights.¹⁷

Furthermore, gender-insensitive juridical arguments often minimize the psychosocial impact experienced by victims.¹⁸ Sexual violence not only has a physical impact, but it also causes deep psychological trauma and prolonged social stigma. When

¹⁵ Ramadhan, M. D., & Lasmadi, S. (2024). Analisis Yuridis Pengaturan Tindak Pidana Pelecehan Seksual Sesama Jenis Ditinjau Dari Perundang-Undangan Indonesia. *Pampas: Journal Of Criminal Law*, 5(2), 139-156.

¹⁶ Nova, E. (2025). Implikasi Yuridis Pembuktian Tindak Pidana Kekerasan Seksual Dalam Perspektif Undang-Undang Nomor 12 Tahun 2022 Bagi Pembenuhan Keadilan Korban. *Unes Journal of Swara Justisia*, 9(1), 208-219.

¹⁷ Adaramola, O. A. (2022). The Gender Influence in Law, Legal Concepts and Judicial Reasoning: Assessing its Contribution to Defining the Reasonable Person in English Law from Feminist Perspectives. *Journal of Intersectional Social Justice*.

¹⁸ Putra, I. W. (2024). *TINJAUAN YURIDIS PERLINDUNGAN TERHADAP KORBAN KEKERASAN SEKSUAL BERDASARKAN KEBIJAKAN HUKUM PIDANA (Studi Kasus Kejaksaan Negeri Kajen Kabupaten Pekalongan)* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

the judge's consideration ignores this dimension, the justice provided is pseudo-and formalistic. In this case, the verdict no longer reflects the protection of the victim, but rather strengthens the social status quo that silences women's voices.

Feminist legal theory is a critical analytical tool in studying this problem. This theory holds that law is not neutral or value-free, but rather is formed and implemented within the framework of a masculine and often oppressive social structure. As Catharine MacKinnon and Martha Fineman argue, conventional law often fails to recognize women's life experiences as a valid source in legal construction. This is evident in how legal provisions and precedents tend to depart from the masculine paradigm of rationality, objectivity, and agency.

Thus, the analysis of gender inequality in legal reasoning demands an interdisciplinary approach, which relies not only on legal doctrine, but also on sociological, psychological, and gender studies approaches. The goal is to dismantle the legal epistemological structure that has so far failed to accommodate substantive justice for women. This approach highlights the importance of gender perspective training for judicial officers, as well as the need for a progressive reinterpretation of legal norms to be more responsive to the reality of gender-based violence.

Empirically, several studies of court decisions in Indonesia, especially before the promulgation of Law No. 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law), show that many judges assess cases of sexual violence using conventional morality or even religious benchmarks, instead of using legal analysis based on human rights and gender equality. For example, victims who do not resist or flee are considered to agree, or victims who have a courtship relationship with the perpetrator are considered to have contributed to the occurrence of the violence.

This condition shows the existence of epistemic asymmetry in the judiciary, where the experiences of victims of sexual violence are not accepted as valid knowledge. On the other hand, the perpetrator's narrative is often accepted without criticism. This creates structural inequities in the production of legal truth which has implications for the blurring of the facts of violence and the victimization of victims. Therefore, juridical reform must be accompanied by epistemological and cultural reforms in the judicial environment.

3. The Urgency of Reformulating the Judicial Paradigm Through Legal Feminization

The Urgency of Reformulating the Judicial Paradigm through Legal Feminization reflects a profound shift in the juridical approach to justice issues, especially in the realm of criminal law which has tended to be masculine and formalistic. Legal feminization is a critical concept that departs from the realization that the legal system, both in the formulation of norms, legal interpretation, and the implementation of judgments, still reflects structural biases that ignore women's typical experiences, especially in the context of sexual violence. In the dominant positive legal tradition, victims of sexual violence are often faced with a heavy burden of proof, narratives that cast doubt on their testimony, and a procedural system that is insensitive to the trauma they have experienced.

The feminist judicial paradigm demands fundamental changes, not only at the technical-formal level, but also in the way of legal thinking that underlies the practice of criminal law enforcement. In this framework, justice is not sufficiently understood procedurally, but must shift towards substantive justice that takes into account power relations, structural vulnerability, and psychosocial dynamics of victims. Legal feminization, thus, includes a transformation of the legal paradigm that integrates the

values of empathy, representation, and women's life experiences into the criminal justice system. This is not just a sentimental approach, but an epistemological agenda to challenge the dominance of a pseudo-neutral but essentially patriarchal legal narrative.

The urgency of legal feminization is increasingly emerging in the context of the implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law).¹⁹ Although this law has contained various progressive protections for victims, its implementation in the field still faces structural obstacles stemming from a legal culture that has not been fully gendered. In this case, the court as an institution of justice enforcement needs to be encouraged to carry out a paradigmatic reformulation, namely reconstructing the perspective of judges, prosecutors, and investigators in order to be able to understand the complexity of sexual violence not only as a violation of the law, but also as a form of gender injustice rooted in social inequality.

Strategic steps that need to be taken include the implementation of gender sensitivity training on a regular basis for all law enforcement officials.²⁰ This training must go beyond the formal aspects of legal knowledge and touch on the ethical dimension and contextual understanding of the victim's experience. In addition, increasing women's representation in the judiciary is also an urgent need. Women's participation in strategic positions is not only symbolic, but also substantive in articulating alternative perspectives in legal considerations and court decisions.

Furthermore, legal feminization also requires revision of criminal law doctrines that still rely on an objective-rationalistic paradigm.²¹ Doctrines such as the principles of legality, elements of error, and proof need to be reconstructed to make room for victim narratives and the use of non-conventional evidence, such as forensic psychology or victim impact statements. In this case, it is also important to adopt the principle of restorative justice that is oriented towards the recovery of the victim, not just the punishment of the perpetrator.

Institutional transformation within the framework of legal feminization also needs to be strengthened by the establishment of integrated service units in the courts that provide counseling, legal assistance, and psychological recovery services for victims. This emphasizes that the function of the judiciary is not only as a tool of state repression, but also as a vehicle for protection and recovery for citizens who experience injustice. With this kind of approach, the court can carry out its constitutional mandate in a more humanistic and inclusive manner.

As a theoretical reflection, legal feminization is not only a critique of the masculine legal status quo, but also a methodological offer to develop a critical legal theory that is transformative. In the Indonesian context, this is very relevant to respond to the failure of the justice system in providing optimal protection to victims of gender-based violence. Therefore, legal feminization needs to be placed as an integral part of the national legal reform movement that favors vulnerable and marginalized groups.

¹⁹ Utaminingsih, A. (2024). *Kajian Gender: Berperspektif Budaya Patriarki*. Universitas Brawijaya Press.

²⁰ Sidik, I. A., & Suherman, A. (2024). Efektivitas Penerapan Hukum Perlindungan Perempuan Dan Anak Dalam Mencegah Kekerasan. *Jurnal Kajian Hukum Dan Kebijakan Publik* | E-ISSN: 3031-8882, 2(1), 174-182.

²¹ Faisal, Yanto, A., Rahayu, D. P., Haryadi, D., Darmawan, A., & Manik, J. D. N. (2024). Genuine paradigm of criminal justice: rethinking penal reform within Indonesia New Criminal Code. *Cogent Social Sciences*, 10(1), 2301634.

CONCLUSION

The implementation of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law) in criminal justice practice reflects the state's efforts to carry out legal reforms based on the victim's perspective. However, the success of this implementation is largely determined by how the judge translates progressive norms into equitable juridical arguments. In a number of rulings, it can be seen that the principle of victim protection has not been fully internalized in judicial practice. Judges often still use a formal approach to proof and question the credibility of the victim, thus ignoring the spirit of non-vindication. Non-physical sexual violence recognized by the TPKS Law has also not been fully translated with a contextual and adaptive approach in proof. The reliance on conventional legal paradigms has led to the victim's testimony not being considered as consistently valid primary evidence. In addition, gender bias and normative stereotypes still affect legal reasoning, which hinders the application of the principles of non-discrimination and substantive justice. In this context, law is not just a normative mechanism, but also an ideological means that can strengthen or break social inequality. Therefore, judicial training with a gender perspective and revision of the criminal procedure law that is not yet responsive is needed. Progressive rulings that make victim trauma part of legal considerations suggest that a paradigm shift is possible. Judicial reform in cases of sexual violence must include the integration of feminist values of law as a new epistemic framework for understanding power relations. Thus, legal justice is not only procedural, but also transformational and substantive in ensuring protection for victims.

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