

Power and Silence: Constitutional and Institutional Reforms to Address Sexual Violence in Indonesian Higher Education

Muhtar Said¹ , Fira Mubayyinah² , Muhammad Adib Alfari^{3*} , Ali Akhbar Abaib Mas Rabbani Lubis⁴ 

^{1,2,4}Universitas Nahdlatul Ulama Indonesia, Indonesia

³Institut Agama Islam Negeri Pontianak, Indonesia

*Corresponding author: said@unusia.ac.id

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Why do comprehensive legal reforms fail to provide consistent protection for survivors of sexual violence in higher education? This article addresses this question through a qualitative doctrinal legal study informed by a Foucauldian perspective on the power relations. This analysis draws on primary legal materials, including the 1945 Constitution of the Republic of Indonesia, Law No. 12 of 2012 on Higher Education, Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021, and Law No. 12 of 2022 on Sexual Violence Crimes, complemented by relevant secondary legal materials. The findings demonstrate that Indonesia has developed an integrated legal framework that combines constitutional guarantees, higher education governance, administrative regulations, and criminal law. However, the effectiveness of this framework is shaped by institutional authority, academic hierarchy, disciplinary mechanisms, and living law, which collectively influence reporting practices, institutional accountability, and victim protection. This article argues that inconsistencies in institutional responses are explained not simply by the scope of statutory regulation but by the interaction between formal law, power relations, and living law operating within higher education institutions. By extending the concept of living law beyond its conventional association with local communities to modern organizations, this study offers a conceptual framework for understanding how legal authority acquires practical meaning in institutions.

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Public Interest Statement

This study addresses the widespread yet under-acknowledged problem of sexual violence in Indonesian higher education, demonstrating how power asymmetries and inadequate institutional responses undermine constitutional rights and academic integrity. By revealing how current legal and governance structures inadvertently protect perpetrators, the research fills a critical gap in socio-legal scholarship on campus governance and human rights. The study offers evidence-based reforms to strengthen accountability, improve victim protection, and align university policies with constitutional obligations, providing insights essential for policymakers, educators, and the public concerned with creating safe and just educational environments.



Introduction

Sexual violence has become a global public health, human rights, and social justice concern that affects individuals across all social settings, including higher-education institutions (Hearn & Parkin, 2012). Universities are expected to provide safe and inclusive learning environments; however, evidence from many countries indicates that sexual violence remains pervasive in academic communities (McMahon et al., 2020). Victims experience profound

psychological, educational, and social consequences, including trauma, declining academic performance, social isolation, and long-term mental health problems (Garcia et al., 2012). Beyond its impact on individuals, sexual violence undermines institutional credibility and weakens public trust in higher-education systems (Campbell et al., 2008). Consequently, preventing and responding to sexual violence on campus has become a global policy priority, with many countries adopting legal frameworks and institutional mechanisms to strengthen reporting systems, victim protection, and accountability (Hackman et al., 2017).

In Indonesia, sexual violence has emerged as one of the most pressing social issues, requiring comprehensive policy responses (Sumera, 2013). National reports indicate that the number of gender-based violence cases continues to increase each year. According to the National Commission on Violence Against Women (*Komnas Perempuan*), 289,111 cases of violence against women were recorded in 2023, with sexual violence accounting for 15,621 of the reported cases ([Komnasperempuan.go.id](https://komnasperempuan.go.id), 2025). During the first quarter of 2024, 2,041 victims were documented, consisting of 893 adult women and 1,148 children, while cases of Online Gender-Based Violence (KBGO) increased fourfold compared to the previous year ([Kemenpppa.go.id](https://kemenpppa.go.id), 2024). In response to these conditions, the Indonesian government enacted Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education and Law No. 12 of 2022 on the Crime of Sexual Violence (Setiawan et al., 2022). Although these regulations represent important legal progress, their implementation across universities remains inconsistent, particularly in terms of reporting mechanisms, institutional accountability, and victim protection (Campbell et al., 2023).

Existing scholarship has examined sexual violence in higher education from several perspectives. First, sociocultural studies emphasize the influence of patriarchal norms, gender stereotypes, and the normalization of harassment in shaping unequal gender relations and increasing women's vulnerability to sexual violence (Gardiner et al., 2019; Has & Apsari, 2022). Second, legal and policy studies have focused on the effectiveness of institutional regulations, reporting systems, and protection mechanisms designed to prevent and address sexual violence in educational settings (Fitri et al., 2021; Hackman et al., 2017). Third, critical and sociological perspectives argue that sexual violence is embedded within unequal power relations, where authority exercised by lecturers, administrators, and institutional leaders may create structural conditions that enable abuse while discouraging victims from reporting incidents due to academic, professional, or social retaliation (Crowley, 2012; Muhsin et al., 2021; Nengyanti et al., 2024). These perspectives collectively demonstrate that sexual violence in higher education extends beyond individual misconduct and should be understood as a structural phenomenon shaped by institutional power and the organizational culture.

Despite these valuable contributions, several limitations remain in the existing literature. Many studies primarily examine legal frameworks, victim experiences, or sociocultural factors independently, while comparatively few integrate these dimensions through a structural analysis of power relations within Indonesian universities. Moreover, limited attention has been given to how institutional authority simultaneously facilitates sexual violence and constrains the implementation of prevention and protection policies (Santoso & Musyayyadah, 2025). Consequently, the interaction between organizational power structures and policy effectiveness remains insufficiently understood, particularly in the Indonesian higher education context. Addressing this gap is important for explaining why formal regulations alone have not fully prevented sexual violence or ensured effective protection for victims (Crowley, 2012).

This study addresses these limitations by examining sexual violence in Indonesian universities through the lens of power relations and institutional governance (Nengyanti et al., 2024). Specifically, it analyzes how institutional authority influences the occurrence of sexual violence, shapes victims' willingness and ability to report incidents, and affects the implementation of prevention and protection policies (Cabrera Izquierdo et al., 2023). By integrating structural perspectives on power with contemporary policy analysis, this study contributes to the theoretical understanding of sexual violence in higher education and provides empirical evidence to inform the development of more effective institutional governance, victim-centered protection mechanisms, and sustainable prevention strategies within Indonesian universities.

Materials and Methods

This study employs a qualitative doctrinal legal research design (Marzuki, 2017). The doctrinal approach is used to examine the legal framework governing the prevention and handling of sexual violence in Indonesian higher education through systematic interpretation of relevant legislation and legal documents. The analysis is grounded in the Foucauldian tradition, which views law not merely as a set of legal norms but as a mechanism that shapes and regulates power relations through institutional practices (Ball, 2012; Dean, 1999/2010; Foucault, 1977; Rose et al., 2006). Within this framework, the concept of living law is employed to explain how formal legal norms are translated and operationalized through institutional practice (Banakar, 2015; Cotterrell, 2017). This study focuses on legal developments following the enactment of Minister of Education, Culture, Research, and Technology Regulation No.

30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education and Law No. 12 of 2022 on Sexual Violence Crimes.

This study relied exclusively on documentary evidence comprising primary and secondary legal materials. Primary legal materials consisted of the 1945 Constitution of the Republic of Indonesia, Law No. 12 of 2012 on Higher Education, Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education, and Law No. 12 of 2022 on Sexual Violence Crimes. Secondary legal materials included peer-reviewed journal articles, academic books, socio-legal literature, legal commentaries, official reports, and previous empirical studies concerning sexual violence, institutional governance, power relations, and living law. The legal materials were collected through systematic searches of academic databases, official government repositories, and institutional publications and were selected according to their relevance to the research objectives. The data sources are summarized in [Table 1](#).

Table 1. Primary and Secondary Legal Materials

Category	Legal Materials	Analytical Purpose
Primary Legal Materials	The 1945 Constitution of the Republic of Indonesia, Law No. 12 of 2012 on Higher Education, Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education, and Law No. 12 of 2022 on Sexual Violence Crimes.	To examine the constitutional and statutory framework governing the prevention, protection, and resolution of sexual violence in Indonesian higher-education institutions.
Secondary Legal Materials	Peer-reviewed journal articles, academic books, socio-legal literature, legal commentaries, official reports, and previous empirical studies on sexual violence, institutional governance, power relations, and living law.	To interpret legal provisions and develop a socio-legal analysis of formal law, institutional power relations, and living law.

Source: Authors' compilation (2026)

The data were analyzed using the interactive analysis model developed by Miles, Huberman, and Saldaña (2014) integrated with doctrinal legal interpretation. The analysis involved data condensation, data display, conclusion drawing, and verification. All documents were coded into key thematic categories and interpreted through a Foucauldian perspective and the concept of living law to explain the interaction between formal law, power relations, and institutional practices in the protection of victims and the resolution of sexual violence in Indonesian higher education institutions.

Results and Discussion

Sexual Violence in Indonesian Higher Education: Findings from the Doctrinal Analysis

As a preliminary finding derived from the compilation and doctrinal analysis of primary legal materials, this study maps the principal legal instruments that constitute the regulatory framework for the prevention and handling of sexual violence in higher education. This mapping demonstrates the regulatory scope and normative dimensions examined within each legal instrument. As presented in [Table 2](#), these four instruments provide the foundation for identifying the principles of victim protection, the institutional responsibilities of higher education institutions, prevention and response mechanisms, and the forms of legal accountability that are analyzed in detail in the subsequent sections.

Table 2. Findings of the Doctrinal Analysis of the Legal Framework

Legal Instrument	Regulatory Scope	Analytical Focus
The 1945 Constitution of the Republic of Indonesia	It regulates constitutional guarantees concerning human rights, the right to personal security, personal protection, equality before the law, and the right to education.	(1) The right to personal protection, security, and freedom from threats of violence (Article 28G(1)); (2) the right to receive equal opportunities and special treatment to achieve equality and justice (Article 28H(2)); (3) The State's responsibility to respect, protect, promote, enforce, and fulfil human rights (Article 28I(4)); and (4) every citizen's right to education (Article 31(1)).

Law No. 12 of 2012 on Higher Education	Regulates the administration of higher education, the functions and objectives of higher education, students' rights, university governance, and the implementation of the <i>Tri Dharma</i> of Higher Education.	(1) Functions of higher education (Article 4); (2) Objectives of higher education (Article 5); (3) Students' rights to educational services (Article 13); (4) Implementation of the <i>Tri Dharma</i> of Higher Education (Article 1, Points 9–11); (5) Governance, institutional autonomy, and accountability in higher education (Chapter V).
Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021 on the Prevention and Handling of Sexual Violence in Higher Education	Regulates the prevention and handling of sexual violence, victim protection, reporting mechanisms, the establishment of the Sexual Violence Prevention and Handling Task Force (<i>PPKS Task Force</i>), and administrative sanctions within higher education institutions.	(1) Definition and forms of sexual violence (Article 5); (2) Obligations of higher education institutions in preventing sexual violence (Articles 6–9); (3) Procedures for handling sexual violence (Articles 10–22); (4) Establishment, functions, and authority of the <i>PPKS Task Force</i> (Chapter IV, Articles 23–37); (5) Case-handling procedures by the <i>PPKS Task Force</i> (Articles 38–42); (6) Administrative sanctions (Articles 43–49).
Law No. 12 of 2022 on Sexual Violence Crimes	Regulates sexual violence crimes, victims' rights, protection, case handling, recovery, restitution, compensation, and criminal liability.	(1) Objectives of the Law (Article 3); (2) types of sexual violence crimes (Chapter II); (3) victims' rights to case handling, protection, and recovery (Articles 66–70, Chapter VI); (4) restitution and compensation (Chapter VII); and (5) criminal procedural provisions (Chapter VIII).

Source: Authors' compilation (2026)

Based on the compilation and analysis of the legal instruments presented in [Table 2](#), this study finds that the regulation of the prevention and handling of sexual violence in Indonesian higher education is constructed through a layered, complementary legal framework. The 1945 Constitution of the Republic of Indonesia provides the constitutional foundation through Article 28G (1), which guarantees the right to personal protection and security; Article 28H (2), which guarantees equality and justice; Article 28I (4), which establishes the state's responsibility to protect human rights; and Article 31(1), which guarantees the right to education ([Aziz et al., 2022](#)). These constitutional principles are further elaborated in Law No. 12 of 2012 on Higher Education through provisions governing the functions and objectives of higher education (Articles 4–5), students' rights (Article 13), the implementation of the *Tri Dharma* of Higher Education (Article 1, paragraphs 9–11), and the governance and accountability of higher education institutions (Chapter V).

Furthermore, Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021 operationalizes these provisions by regulating forms of sexual violence (Article 5), preventive measures (Articles 6–9), response mechanisms (Articles 10–22), the establishment and authority of the Sexual Violence Prevention and Response Task Force (*Satgas PPKS*) (Articles 23–37), and procedures for case handling and the imposition of administrative sanctions (Articles 38–49). This framework is further reinforced by Law No. 12 of 2022 on Sexual Violence Crimes, which sets out the objectives of victim protection (Article 3), defines sexual violence offences (Chapter II), guarantees victims' rights to assistance, protection, and recovery (Chapter VI), and establishes mechanisms for restitution, compensation, and criminal liability (Chapters VII and VIII). From a normative perspective, these four legal instruments constitute an integrated and coherent regulatory framework encompassing constitutional guarantees, higher education governance, administrative mechanisms, and criminal law enforcement for the prevention and handling of sexual violence in higher education institutions.

The synthesis of these four legal instruments reveals three principal normative findings. First, the regulation of sexual violence in higher education is no longer anchored to a single legal regime. Instead, it is constructed through the integration of constitutional norms, higher-education law, administrative regulations, and criminal law. Second, each legal instrument performs a distinct yet complementary regulatory function: the Constitution provides the foundation for the protection of fundamental rights; the Higher Education Law establishes the basis for institutional responsibility; Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021 provides the

governance framework for prevention and response; and Law No. 12 of 2022 serves as the legal basis for victim protection and for criminal liability. Third, the overall regulatory framework reflects a shift in regulatory orientation from an approach focused primarily on punishing perpetrators to one that integrates prevention, victim protection, recovery, and institutional accountability as essential components of higher-education governance (Abshar, 2024). This argument is consistent with the findings of Riwanto et al. (2023), who emphasized the need for collaborative governance in addressing sexual violence, as reflected in the approaches adopted in countries such as the United States, the Netherlands, Canada, and the United Kingdom.

The findings of this study reinforce a growing body of international scholarship that conceptualizes sexual violence in higher education as an issue of institutional governance, power asymmetry, organizational accountability, and victim-centered protection, rather than merely an individual criminal offence (Bondestam & Lundqvist, 2020; Clancy et al., 2020; Crusto et al., 2024). Numerous studies have shown that hierarchical organizational structures, unequal power relations between faculty members and students, a culture of silence, weak institutional leadership, shame and social stigma, and reporting mechanisms that lack institutional independence consistently undermine the effective implementation of policies for preventing and responding to sexual violence (Achmad et al., 2023; Burns & Sinko, 2023; Fitri et al., 2021; Karami et al., 2020; Roskin-Fraze, 2020; Setiawan et al., 2022). Furthermore, the literature on institutional betrayal demonstrates that institutional failures to provide transparent, accountable, and victim-centered responses reinforce underreporting, erode trust in legal and institutional mechanisms, and reproduce unequal power relations within academic environments (Gómez, 2022; Pyke, 2018; Smith & Freyd, 2014).

Consistent with these findings, Flynn et al. (2025), in their study of sexually explicit deepfake abuse, argue that the primary challenge faced by jurisdictions with dedicated legal frameworks is no longer the absence of legal norms. Rather, it concerns institutional capacity, inter-agency coordination, and the consistent implementation of policy. In the Indonesian context, this study demonstrates that the legal framework has evolved into an integrated regulatory system encompassing constitutional guarantees, higher education governance, administrative mechanisms, and criminal liability. Nevertheless, as highlighted in the existing literature, the effectiveness of this legal framework ultimately depends on how authority is distributed, oversight mechanisms are exercised, and victim protection is implemented in institutional practice (Noer et al., 2021; Nurisman, 2022; Riwanto et al., 2023; Setiawan et al., 2022; Taufiqurrohman et al., 2024). This issue therefore calls for further analysis of how legal norms not only regulate behavior but also shape and reproduce power relations within higher education institutions.

Dimensions of Power: Legal Norms in the Protection and Resolution of Sexual Violence in Higher Education

The mapping of the legal instruments presented in the previous section demonstrates how the regulatory framework for the prevention and handling of sexual violence is normatively constructed. However, an analysis of the substantive legal provisions alone does not fully explain how these norms operate in institutional practice. Accordingly, this section shifts the analytical focus from *what the law provides* to *how the law operates* by examining how legal norms shape institutional authority, govern institutional practices, and construct power relations within higher education institutions. Based on our in-depth analysis, these dynamics can be mapped, as illustrated in Figure 1.

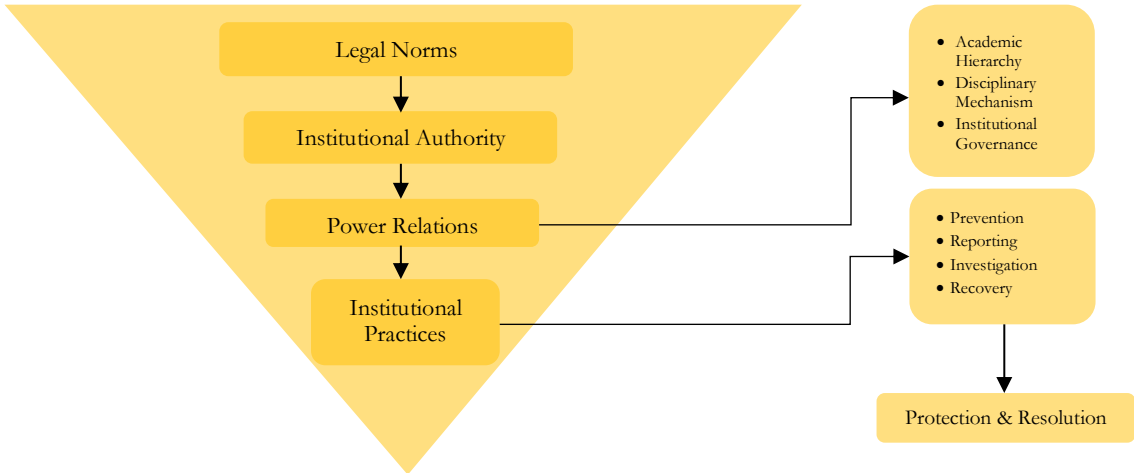


Figure 1. Legal Norms and Power Relations in the Protection and Resolution of Sexual Violence in Higher Education
Figure 1 illustrates that these legal norms function as instruments for constituting institutional authority in the governance of higher education. Under the prevailing legal framework, authority is distributed among multiple actors, including higher education institutions, university leaders, the Sexual Violence Prevention and Response Task Force

(*Satgas Pencegahan dan Penanganan Kekerasan Seksual* [PPKS]), and law enforcement agencies, thereby establishing institutional authority as the foundation for the exercise of academic and administrative functions. This authority, in turn, shapes power relations that operate through three interconnected dimensions: academic hierarchy, referring to authority relationships among faculty members, academic supervisors, university leaders, and students; disciplinary mechanisms, encompassing processes of monitoring, evaluation, investigation, and sanctioning to ensure compliance with legal and institutional norms; and institutional governance, referring to the coordination, accountability, and decision-making arrangements that guide the handling of sexual violence. These three dimensions are subsequently operationalized through institutional practices, including prevention, reporting, investigation, and victim recovery, as concrete manifestations of legal norms within higher education institutions. Accordingly, protection and resolution represent the outcome of an integrated process linking legal norms, institutional authority, power relations, and institutional practices. [Figure 1](#) therefore demonstrates that the effectiveness of protecting victims and resolving cases of sexual violence depends not only on the comprehensiveness of the regulatory framework but also on how legal norms shape, distribute, and operationalize power relations through institutional governance within higher education.

Although the regulatory framework clearly allocates institutional authority, the implementation of legal protection ultimately occurs within an institutional environment permeated by power relations. Within higher education institutions, academic authority functions as more than an administrative mechanism. Rather, it establishes positions of authority that influence how reports are received, facts are constructed, and institutional decisions are made. Consequently, the relationships among faculty members, academic supervisors, university leaders, and students do not simply reflect the division of academic responsibilities but also reveal structural asymmetries that may discourage victims from reporting incidents or obtaining effective protection ([Arifin et al., 2018](#); [Jackson and Sundaram, 2020](#)). These dynamics become even more complex when institutional interests in preserving organizational legitimacy intersect with case-handling processes, allowing organizational culture, academic retaliation, and institutional pressures to shape victims' access to justice ([Burns & Sinko, 2023](#); [O'Callaghan et al., 2022](#); [Roskin-Frazer, 2020](#)).

These observations are reinforced by longitudinal evidence, with multiple indicators revealing the persistence of broadly similar patterns following the enactment of Minister of Education, Culture, Research, and Technology Regulation No. 30 of 2021 and Law No. 12, of 2022. The National Commission on Violence Against Women (*Komnas Perempuan*) recorded at least 82 reports of sexual violence in higher-education institutions during the 2021–2024 period ([Komnas Perempuan, 2025](#); [Larasati et al., 2025](#)). Meanwhile, a national survey conducted by the Ministry of Education, Culture, Research, and Technology found that approximately 77% of faculty members stated that sexual violence had occurred on their campuses, and 63% of those who were aware of such cases chose not to report them because of concerns about the institution's reputation ([Inspektorat Kemdikbud, 2021](#)). These findings reveal a gap between the normative design of the legal framework and its institutional implementation, and indicate that reporting, investigation, and case resolution continue to be shaped by the configuration of authority operating within higher education institutions ([Guzman, 2022](#)). A similar pattern has been identified in cross-national studies examining the experiences of more than 2, 000 survivors of sexual violence in higher education, where power asymmetries between academic authorities and students, fear of retaliation, and persistent underreporting consistently emerge despite changes in regulatory frameworks ([Burns & Sinko, 2023](#); [Karami et al., 2020](#); [O'Callaghan et al., 2022](#)). Accordingly, the central issue shifts from the substance of the law to the institutional mechanisms through which power relations are constituted and exercised.

Accordingly, the configuration of institutional authority mapped in [Figure 1](#) can be further understood from Michel Foucault's perspective on power relations. From this perspective, Foucault conceptualizes law not merely as a set of repressive norms or as an authority concentrated in a single actor. Rather, law operates as a technology of power that functions through institutions, procedures, and institutional practices ([Foucault, 1977, 1982](#)). Within the Foucauldian tradition, power is understood as a productive and diffuse relationship exercised through mechanisms of governmentality, whereby the regulation of conduct is achieved through governance, surveillance, and institutional accountability rather than through coercion alone ([Dean, 2010](#); [Burchell et al., 1991](#); [Lemke, 2019](#); [N. Rose et al., 2006](#); [N. S. Rose, 2009](#)). From this perspective, Foucauldian scholarship on higher education similarly argues that universities are not merely sites of education but also arenas in which power relations are produced through academic hierarchies, professional standards, and institutional procedures that shape how sexual violence is defined, addressed, and resolved ([Ahmed, 2021](#); [Ball, 2012](#); [Montano Durán, 2025](#); [Morley, 2003](#)). Accordingly, the effectiveness of legal protection depends not only on the comprehensiveness of the regulatory framework but also on how legal norms are operationalized through institutional governance and the power relations embedded within them.

Beyond discipline and governmentality, a biopolitical perspective clarifies how institutions govern populations by defining risks, producing expert knowledge, and assigning responsibility. Although examining stunting rather than

sexual violence, [Rahmaniah et al. \(2025\)](#) show that top-down policy narratives can translate technical objectives into gendered responsibilities, overburden women, marginalize community agency, and weaken participation when local realities are ignored. As an analytical analogy, this evidence helps explain why campus sexual-violence policy cannot be reduced to procedural compliance: institutional discourse also determines whose knowledge is authoritative, which bodies are treated as objects of protection or regulation, and who carries the burden of prevention. The transfer is conceptual, not empirical, and therefore does not equate the two policy fields.

Through a Foucauldian reading, the findings of this study demonstrate that academic hierarchy, disciplinary mechanisms, and institutional governance operate as interrelated configurations of power that simultaneously produce authority, shape institutional knowledge, and direct institutional responses to sexual violence. First, academic hierarchy creates relationships of dependency that legitimize the authority of faculty members, academic supervisors, and university leaders in determining students' access to assessment, supervision, and academic progression. Second, disciplinary mechanisms transform this authority into a regime of examination through procedures of reporting, verification, investigation, and sanctioning that not only assess factual circumstances but also determine which narratives are recognized as credible. Third, institutional governance integrates these processes into the organizational logic of higher education through coordination, risk management, and the protection of institutional legitimacy, such that decisions concerning the handling of sexual violence cases are never exclusively legal in nature but are also shaped by administrative and reputational considerations. These findings are consistent with the evolution of international scholarship, which has shifted its analytical focus from perpetrators' conduct toward a critical examination of institutional responses.

This finding is consistent with the concept of institutional betrayal, which suggests that institutions may become complicit in the reproduction of violence when they fail to respond independently or prioritize organizational protection over survivors' recovery ([Freyd, 2018](#); [Gómez, 2022](#)). Similarly, the literature on organizational betrayal demonstrates that bureaucratic procedures, delays in investigation, and unclear accountability mechanisms can reinforce existing power asymmetries ([Shakeshaft, 2025](#)). Moreover, studies on higher education governance in the United Kingdom, Australia, and Canada indicate that regulatory reforms produce only limited improvements unless they are accompanied by institutional independence, procedural transparency, and external oversight of mechanisms for addressing sexual violence ([Cassidy, 2024](#); [Henry, 2023](#); [Senn et al., 2014](#); [Sheehy A., 2012](#); [Weale, 2024](#)). Accordingly, power relations explain only one dimension of how law operates. The other lies in how legal norms acquire meaning through social practice, which is the focus of the following discussion on living law and the formal legal framework.

Living Law and the Formal Legal Framework for Addressing Sexual Violence in Humanitarian Crises and Higher Education

The discussion of power relations in the previous section demonstrates that the effectiveness of legal protection depends not only on how legal norms are formulated but also on how they are implemented in practice. In this context, the law never operates in a social vacuum. Rather, the implementation of formal legal norms invariably interacts with the values, customs, and practices that exist within the communities in which those norms are applied ([Tamanaha, 2011](#); [Van Dijk and Beunen, 2009](#)). Thus, to understand why a legal framework that has normatively evolved toward a victim-centered approach continues to produce variations in victim protection, it is necessary to examine the relationship between living law and formal law in the institutional practices of higher education.

Religious and cultural norms may also shape how consent is understood within institutional communities. Indonesian Islamic scholarship itself reflects this contestation: [Al Faruqi and Indallah \(2022\)](#), for example, critically assess the compatibility of sexual-consent discourse with *maqāṣid al-sharīʿah*. Regardless of the position adopted in that debate, its existence is socio-legally significant because university actors may interpret formal consent rules through religious and moral vocabularies. Such plural normative interpretations must not be allowed to dilute the legal requirements of voluntariness, victim protection, and institutional accountability; rather, they should be addressed through rights-consistent policy communication and culturally literate prevention programs.

The concept of *living law*, originally introduced by Ehrlich (1936), posits that the law that genuinely governs social behavior is not necessarily identical to written law (*law in books*), but also encompasses the social norms that evolve through everyday social practices ([Ehrlich, 2002](#)). In contemporary socio-legal scholarship, *living law* is understood as the process through which formal legal norms acquire meaning through interpretation, negotiation, and social practices undertaken by institutional actors ([Banakar, 2015](#); [Cotterrell, 2017](#)). Accordingly, the effectiveness of law depends not only on the existence of legal regulations but also on the degree of alignment between formal legal norms and the social order that exists within a community. Building on this perspective, we develop the analytical framework presented in [Figure 2](#).

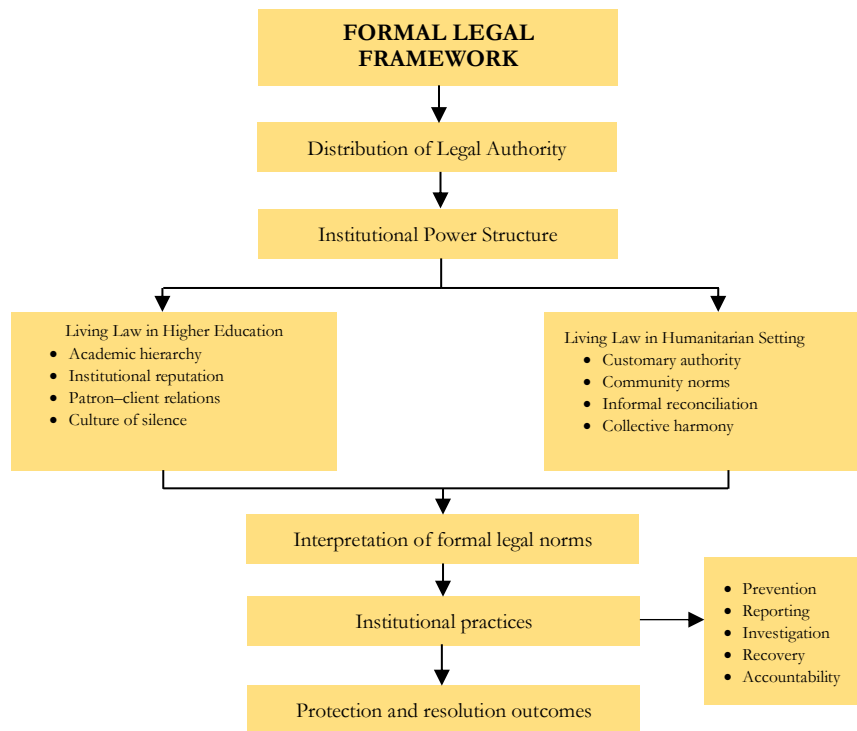


Figure 2. Interaction between Formal Law and Living Law in Institutional Protection

As illustrated in [Figure 2](#), this study extends the findings presented in the previous section by demonstrating that the power relations constituted by legal norms do not automatically result in effective victim protection. Rather, these power relations consistently interact with the living law that evolves within the institutional environment in which it is implemented. Accordingly, this study conceptualizes living law as a socio-legal mechanism that mediates the relationship between the formal legal framework, distribution of institutional authority, and institutional practices. In the context of higher education, living law manifests through academic hierarchies, patronage networks, the protection of institutional reputation, and a culture of silence, all of which shape how institutional authority is exercised throughout the processes of reporting, investigation, and victim recovery. In contrast, in humanitarian crises, living law develops through customary authority, community norms, informal dispute resolution, and an orientation toward maintaining social harmony, all of which influence the implementation of legal protection.

The inclusion of these two contexts is not intended to equate their institutional characteristics. Rather, it is intended to demonstrate that the effectiveness of formal law across different institutional settings consistently depends on the normative order that exists within those institutions. In this respect, the present study extends the concept of living law, which has traditionally been understood primarily as a phenomenon associated with customary societies or local communities, to the context of modern organizations, such as higher education institutions. From this perspective, living law is understood as the body of social norms that shapes how institutional actors interpret and operationalize their obligations under formal law. The findings further suggest that variations in the effectiveness of protecting victims and resolving cases of sexual violence are determined not primarily by differences in the substance of legal regulations, but by the dynamic interaction between the formal legal framework, power relations, and living law, which collectively shape institutional practices for protecting victims.

The humanitarian-crisis comparison is supported by [Yusuf et al. \(2026\)](#), whose maqāṣid analysis of pregnancies caused by Boko Haram-induced rape and forced marriage shows that formal prohibitions are mediated by contextual judgments concerning fetal life, psychological trauma, dignity, social harm, and public welfare. Although this setting differs fundamentally from higher education, it illustrates the same socio-legal mechanism: effective protection depends on how normative authorities interpret general rules in response to victims' concrete circumstances. This comparison therefore supports a contextual, survivor-sensitive interpretation without collapsing distinct institutional settings.

These findings demonstrate that the effectiveness of legal protection is determined not solely by the quality of the regulatory framework but also by the capacity of formal law to interact with the normative order embedded within each institutional setting. From a socio-legal perspective, this indicates that the successful implementation of law

depends on the alignment between *law in books* and *law in action*, making *living law* a critical factor in determining whether legal norms are translated into effective practices of victim protection (Banakar, 2015; Cotterrell, 2017; Tamanaha, 2011). The findings also broaden the conventional understanding of *living law*, which has largely been examined in the context of customary societies and local communities, by demonstrating that modern organizations, such as higher education institutions, likewise develop internal normative orders that shape the implementation of formal law. In doing so, this study reinforces existing scholarship that conceptualizes *living law* as a normative dimension through which formal law is operationalized, with the effectiveness of victim protection ultimately depending on how legal authority is exercised in institutional practice (Aprilianda et al., 2022; Utama, 2021).

These findings are also consistent with contemporary socio-legal scholarship, which conceptualizes legal effectiveness as the product of interactions between formal legal norms and the social practices that evolve within organizations, rather than merely the existence of statutory regulations. From the perspectives of legal pluralism and legal consciousness, law acquires meaning through the ways it is interpreted, negotiated, and enacted by actors operating within specific institutional settings (Ewick & Silbey, 1998; Jamjami & Cholila, 2026; Tamanaha, 2017; Von Benda-Beckmann & Benda-Beckmann, 2017). In a similar vein, Edelman (2016), through the theory of legal endogeneity, argues that organizations do not implement laws mechanically. Instead, they translate legal obligations in ways that reflect their internal structure, organizational culture, and institutional interests. This perspective converges with the Foucauldian tradition, which understands law not merely as a normative instrument but as a technology of power operating through institutional practices, mechanisms of surveillance, and processes of governmentality that shape the conduct of institutional actors (Foucault, 1977; Dean, 2010; Lemke, 2019; Rose, 2009).

Within modern organizations, power no longer operates primarily through coercion but through administrative procedures, professional standards, accountability mechanisms, and organizational cultures that shape how authority is exercised (Ahmed, 2021; Ball, 2012; Morley, 2003). This perspective helps explain why identical legal frameworks may produce different levels of victim protection across institutions, as the implementation of the law is invariably shaped by the configuration of power relations that develop within each organization. In humanitarian crises, a similar pattern emerges when communities rely more heavily on locally legitimate normative mechanisms rather than formal legal procedures (Muslimin et al., 2024; Suzuki, 2023). In the Indonesian context, several studies indicate that the principal challenge in implementing policies for the prevention and handling of sexual violence in higher education is not the availability of legal norms but rather the disparities in institutional capacity to translate those policies into internal governance practices. This process is influenced by institutional pressures and policy isomorphism in the absence of comparable organizational readiness, variations in the social and political contexts of universities, insufficient institutional capacity building, limited integration of sexual violence prevention and response into the curriculum, and inadequate competencies and resources among implementing personnel (Nengyanti et al., 2023, 2024a; Nursyifa et al., 2026; Wahyuni et al., 2026).

Simultaneously, cultures of shame, social stigma, concerns about academic consequences, and limited trust in internal support services discourage survivors from reporting incidents, while weak digital literacy and suboptimal communication channels restrict access to information, support services, and available response mechanisms (Achmad et al., 2023; Attala & Nurhaeni, 2024; Fazny et al., 2024; Noer et al., 2021; Nurisman, 2022). These conditions also illustrate a form of inter-legal contestation (Syarahmalia & Huda, 2026), which, in the context of this study, refers to the tension between formal legal obligations that guarantee reporting and victim protection and the normative order that develops through institutional practice. Consequently, a comprehensive response to sexual violence requires the integration of applicable legal frameworks, statutory laws, institutional accountability, and human rights principles (Wismayanti et al., 2019; Zhang et al., 2026). Taken together, the Indonesian literature suggests that gaps in victim protection arise primarily from the intersection of limited institutional capacity, organizational culture, the preparedness of *Satgas PPKS*, the quality of institutional coordination, and the credibility of reporting systems, rather than from deficiencies in the regulatory framework alone.

Taken together, these findings demonstrate that the successful implementation of policy depends largely on an institution's ability to establish governance that is responsive and collaborative in addressing the needs of survivors through effective institutional leadership, strengthened capacity of the *Satgas PPKS*, cross-sectoral coordination, and independent and trustworthy reporting mechanisms. Against this background, the present study extends the concept of living law by demonstrating that the social norms embedded within modern organizations, including higher-education institutions, function as mechanisms that mediate the implementation of formal law. Therefore, the effectiveness of victim protection is determined not only by compliance with legal regulations but also by an institution's capacity to align its legal obligations with its organizational culture, institutional practices, and the social norms that operate within it.

Evidence from Islamic educational institutions also indicates that prevention is most effective when formal policy is integrated with institutional culture and relationships. Based on multiple case studies of 15 pesantren, Kholik et al. (2025) found that written policies and staff training were insufficient unless accompanied by cultural mediation, inclusive pedagogy, physical and psychological safety, student agency, and sustained staff–family collaboration. Translated to higher education, these findings reinforce the need to embed Satgas PPKS within a broader institutional climate that converts formal obligations into routine practices, trusted relationships, and shared responsibility for prevention.

Conclusion

The legal framework governing the prevention of and response to sexual violence in Indonesian higher education has evolved into an integrated system that combines constitutional protection, higher education governance, administrative regulation, and criminal accountability. However, this study argues that the existence of such a regulatory framework alone cannot adequately explain variations in victim protection across different institutions. Instead, legal authority is operationalized and negotiated through power relations embedded in academic hierarchies, disciplinary mechanisms, and institutional governance, which interact with the living law operating within institutional settings. On this basis, this study proposes that the effectiveness of victim protection is not a direct consequence of formal legal regulation but rather the product of the dynamic interaction between formal law, power relations, and living law. In doing so, this study extends the concept of living law beyond its conventional association with local communities by positioning higher education institutions as normative arenas in which legal authority acquires practical meaning.

This study is limited by its reliance on doctrinal analysis and socio-legal interpretation, and the proposed conceptual model has not been empirically validated. Future research should examine this proposition across different types of higher-education institutions and other institutional contexts, including humanitarian settings, to explore how variations in organizational culture, configurations of power relations, and living law shape different levels of victim protection under the same formal legal framework.

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