

The Gap Between Das Sollen and Das Sein in The Implementation of Rehabilitation for Perpetrators of Sexual Violence

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Abstrak

Pasal 17 Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (UU TPKS) menempatkan rehabilitasi pelaku sebagai tindakan yang bersifat fakultatif. Artikel ini mengajukan pertanyaan hukum spesifik: apakah tindakan tersebut memenuhi unsur doktrinal yang disyaratkan bagi sanksi dalam sistem dua jalur, dan jika tidak, apakah kesenjangan norma-praktiknya lebih disebabkan cacat desain norma atau keterbatasan kapasitas kelembagaan. Dengan metode yuridis normatif (pendekatan perundang-undangan, kasus, dan konseptual, berbasis bahan hukum primer, sekunder, dan tersier tanpa data lapangan), artikel ini menyusun uji doktrinal empat unsur (jenis tindakan, kriteria pemicu, otoritas pelaksana, konsekuensi ketidakpatuhan), lalu menerapkan kerangka efektivitas hukum lima faktor Soerjono Soekanto. Pasal 17 hanya memenuhi satu unsur secara penuh; tiga unsur lainnya tidak terpenuhi atau hanya sebagian, cacat yang berpadu dengan keterlambatan peraturan pelaksana, kepadatan hunian lapas 86-89 persen, dan ketiadaan eksekutor pada rezim hukum bersinggungan. Berbeda dari studi terdahulu yang hanya mendeskripsikan kesenjangan secara umum, artikel ini memisahkan Pasal 17 dari rezim kebiri kimia PP 70/2020 dan menyediakan standar doktrinal teruji serta kerangka penjelas, diperkuat perbandingan implementasi di Uruguay. Usulan reformasi yang dihasilkan, berupa praduga terbantahkan yang dibatasi analisis proporsionalitas, mengikuti langsung temuan doktrinal tersebut, dengan syarat tetap menjaga diskresi hakim dan perlindungan korban yang telah dijamin UU TPKS.

Kata Kunci: kebijakan pidana; kekerasan seksual; rehabilitasi pelaku; UU TPKS.

Abstract

This article asks whether the discretionary rehabilitation measure for perpetrators of sexual violence under Article 17 of Indonesia's Law Number 12 of 2022 on Sexual Violence Crimes (the TPKS Law) satisfies the doctrinal elements of an enforceable double-track sanction; if not, whether the resulting gap stems from the norm's design or institutional capacity. Using a normative juridical method (statutory, case, and conceptual approaches on primary, secondary, and tertiary materials, without field data), the article develops a four-element doctrinal test, measure type, triggering criteria, implementing authority, and enforcement consequence, and then applies Soerjono Soekanto's five-factor test of legal effectiveness to explain the gap. Article 17 satisfies only one element in full; the other three are absent or partial, a design defect compounded by delayed implementing regulations, national prison overcrowding of 86 to 89 percent, and the absence of a ready executor under an adjacent regime. Unlike

prior studies, which describe the gap only in general terms, this article isolates Article 17 from the adjacent chemical castration regime under Government Regulation 70/2020 and supplies a testable doctrinal standard and explanatory framework, informed by a comparable implementation case from Uruguay. The resulting reform proposal, a rebuttable presumption bounded by proportionality safeguards, follows directly from the doctrinal finding and is conditioned on preserving judicial discretion and the victim-centered protections the TPKS Law already secures.

Keywords: criminal policy; offender rehabilitation; sexual violence; TPKS Law

INTRODUCTION

Violence against women in Indonesia rose by 9.77 percent in 2024, to 445,502 recorded cases, with sexual violence tying psychological violence for the largest share, at 26.94 percent each.¹ These figures came three years after Indonesia enacted Law Number 12 of 2022 on Sexual Violence Crimes (the TPKS Law), legislation once celebrated as a breakthrough for making offender rehabilitation, not punishment alone, an explicit part of the criminal justice response. Article 17 of the TPKS Law provides that an offender "may be subjected to a measure in the form of rehabilitation," medical and social, coordinated by the public prosecutor and supervised by the Ministries of Social Affairs and Health.² A parallel provision, Articles 103 and 105 of Law Number 1 of 2023 on the National Penal Code, introduces a double-track system pairing a principal sentence with a measure, including rehabilitation.³ Both instruments track a shift from a retributive paradigm toward a corrective one, consistent with Article 10 (3) of the International Covenant on Civil and Political Rights (ICCPR), which requires that a state party's penitentiary system, including Indonesia, be essentially aimed at reformation and social rehabilitation.⁴

Whether a norm that reads clearly on paper actually works on the ground is a question Indonesian scholarship has not examined closely. Aryanti and Hartono conclude that offender rehabilitation under the TPKS Law remains largely normative, still awaiting the implementing regulations and inter agency coordination it presupposes.⁵ Verennestya and Mahardhika go further, identifying a normative vacuum in social rehabilitation specifically, since the Law never specifies the mechanism for carrying it out.⁶ The National Legal Development Agency finds a

¹ Siaran Pers Komnas Perempuan tentang Peluncuran Catatan Tahunan 2024," diakses 25 Agustus 2026, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-peluncuran-catatan-tahunan-2024>.

² Pasal 17, Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual, Lembaran Negara Republik Indonesia Tahun 2022 Nomor 120, 58.

³ Pasal 103 dan Pasal 105, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1., 229.

⁴ International Covenant on Civil and Political Rights, Pasal 10(3), diratifikasi Indonesia melalui Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights.

⁵ Ni Nyoman Ayu Trisna Aryanti dan Made Sugi Hartono, "Pengaturan Rehabilitasi Bagi Pelaku Kekerasan Seksual Dalam Perspektif Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 7213-7222, <https://doi.org/10.61104/alz.v4i1.4463>.

⁶ Audera Verennestya dan Vita Mahardhika, "ANALISIS KEKOSONGAN NORMA REHABILITASI SOSIAL PELAKU KEKERASAN SEKSUAL DALAM UNDANG-UNDANG NOMOR 12 TAHUN 2022

serious gap between formal regulation and implementation across the TPKS Law generally, without isolating the rehabilitation provision.⁷ Hairi and colleagues similarly find the Law still not applied optimally or evenly by law enforcement officers.⁸

None of these studies applies the *das sollen-das sein* framework to Article 17 specifically, separating it from adjacent TPKS issues such as victim restitution or chemical castration, which fall under a different legal regime. This distinction matters. Chemical castration, often mistaken for part of the TPKS Law, is regulated separately by Law Number 17 of 2016 and Government Regulation Number 70 of 2020, and applies only to offenses against child victims.⁹ Conflating the two regimes risks blurring any assessment of how Article 17 itself performs.

This article investigates not the general phenomenon of weak statutory implementation, which is already well documented above, but a narrower legal question: precisely which legal interest is impaired by the gap between Article 17's promise of rehabilitation and its non-application in practice. Three interests are implicated. Legal certainty (*kepastian hukum*) is compromised for offenders and victims alike, since neither can know in advance the conditions under which a rehabilitation measure will or will not be imposed. The institutional competence Article 17(3) assigns to the public prosecutor and the two named ministries remains undefined in practice, since no instrument specifies how that coordination is to occur. Indonesia's due diligence obligation under CEDAW General Recommendation No. 35, which requires not only legislating against gender-based violence but also ensuring that the legislated response actually functions, remains unfulfilled as long as a codified measure exists only on paper. Applying the due diligence framework specifically to Indonesia, Dewantary and Endut find that protection measures exist on the books but that barriers in prosecution and punishment of perpetrators leave the state's obligation only partly discharged, a finding that extends directly to the rehabilitation gap examined here.¹⁰ This article treats the gap as a legal certainty and institutional competence problem, not a policy shortfall, and evaluates it on that footing throughout.

TENTANG TINDAK PIDANA KEKERASAN SEKSUAL," *Indonesian Journal of Contemporary Law* 3, no. 02 (2026): 1-17.

⁷ Enrico Putra Pradana, "UU TPKS: Kendala Regulasi Pelaksana, Kapasitas Penegakan, dan Perlindungan Korban," 17 Desember 2025, <https://rechtsvinding.bphn.go.id/articles/1062>.

⁸ Prianter Jaya Hairi dan Marfuatul Latifah, "Implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (Implementation of Law Number 12 of 2022 on Criminal Acts of Sexual Violence)," <https://doi.org/https://doi.org/10.22212/jnh.v14i2.4108>.

⁹ Undang-Undang Nomor 17 Tahun 2016 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 tentang Perubahan Kedua atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak Menjadi Undang-Undang, Lembaran Negara Republik Indonesia Tahun 2016 Nomor 237, Tambahan Lembaran Negara Republik Indonesia Nomor 5946; dan Peraturan Pemerintah Nomor 70 Tahun 2020 tentang Tata Cara Pelaksanaan Tindakan Kebiri Kimia, Pemasangan Alat Pendeteksi Elektronik, Rehabilitasi, dan Pengumuman Identitas Pelaku Kekerasan Seksual terhadap Anak, Lembaran Negara Republik Indonesia Tahun 2020 Nomor 269, Tambahan Lembaran Negara Republik Indonesia Nomor 6585.

¹⁰ Zenny Dewantary dan Noraida Endut, "Tanggung Jawab Negara untuk Memberantas Kekerasan terhadap Perempuan Melalui Kerangka Kerja Ketelitian dalam Hak Asasi Manusia and Punishment in the case of Indonesia," *Indonesian Journal of International Law* 19, no. 4 (2022): 567-598, <https://doi.org/10.17304/ijil.vol19.4.3>.

None of the studies above supplies the analytical tools required for this question, a gap that the following comparison evidences rather than asserts. Aryanti and Hartono establish that rehabilitation remains normative but do not identify which doctrinal elements are missing. Verennestya and Mahardhika identify a normative vacuum in social rehabilitation but do not extend their analysis to Article 17 as a whole. The National Legal Development Agency study and Hairi et al. document an implementation gap across the TPKS Law, but neither isolate Article 17 nor explain why the gap persists. This article supplies what they do not: a doctrinal test specifying what an adequate rehabilitation measure requires, and an explanatory framework, Soerjono Soekanto's five-factor test of legal effectiveness, applied specifically to Article 17 rather than to the TPKS Law as an undifferentiated whole. It also draws a firm line between the adult offender regime under Article 17 and the child victim regime under Government Regulation 70/2020, a distinction the literature above does not consistently maintain.

This state of the art also sits within recent international literature, which strengthens the case that the problem identified here is not a peculiarity of Indonesian drafting practice. Sánchez de Ribera et al., studying the implementation of a sex offense treatment program in Uruguay, a middle income jurisdiction facing constraints comparable to Indonesia's, found that scarce resources, undertrained staff, and a government policy orientation not fully aligned with a rehabilitative approach limited the program's reach even after formal adoption.¹¹ Their findings speak to institutional capacity but do not examine whether the underlying legal mandate was adequately drafted. This article's comparative contribution is to show that, in the Indonesian case, capacity constraints of the kind they document combine with a second and separable defect: a norm that never defines the criteria, authority, or consequence needed to make it enforceable. Indonesia's problem therefore matters beyond a domestic description, since closing an implementation gap in offender rehabilitation mandates may require attention to norm design, not only to resourcing, a distinction the wider comparative literature has not consistently drawn.

This article therefore answers three questions. First, how is offender rehabilitation for sexual violence normatively regulated in the TPKS Law and the National Penal Code, assessed against the doctrinal test set out below (*das sollen*)? Second, what does implementation of that provision look like in practice, based on publicly available court decisions, implementing regulations, and institutional conditions (*das sein*)? Third, what factors explain the gap between the two, and what would it take to close it? The article proceeds in five parts: introduction, research method, results and discussion split into subsections matching the three research questions, and a conclusion that answers each question directly.

RESEARCH METHOD

¹¹ Olga Sánchez de Ribera, Nicolas Trajtenberg, Santiago Redondo, "Implementation of a Treatment Program for Individuals Imprisoned for Sex Offenses in Uruguay: Achievements, Problems and Challenges," *Sexual Abuse* 35, no. 4 (2023): 1-31, <https://journals.sagepub.com/doi/10.1177/10790632221127976>.

This study uses a normative juridical method: legal research that treats law as written norms, analyzed systematically to identify principles, doctrines, and consistency across norms.¹² Primary legal materials are the TPKS Law, the National Penal Code, the Child Protection Law, Government Regulation Number 70 of 2020, the TPKS Law's implementing regulations issued to date, the ICCPR, the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, and officially published court decisions. Secondary and comparative materials are peer-reviewed journal articles and official institutional reports, together with one international comparator: a recent peer-reviewed study of rehabilitation program implementation in Uruguay. It was selected as the closest available case examining implementation, rather than design, of a legally mandated sex offender rehabilitation program outside the North American and European contexts that dominate the effectiveness literature. The analytical technique is descriptive prescriptive, and because this is not field research, no interviews, observations, or other primary data were collected; therefore, any finding regarding the absence of a legal fact is stated throughout as a limitation of what public materials show, not as an absolute claim.

Three approaches are layered on top of one another. The statutory approach examines the TPKS Law, the National Penal Code, and their implementing regulations. The case approach is used narrowly to illustrate how supplementary measures against sexual violence offenders have been applied in judicial practice, including decisions that fall under a different regime from Article 17. The conceptual approach places the *das sollen-das sein* framework, together with international human rights standards, at the center of the analysis. Tertiary materials, legal dictionaries, and encyclopedias are used only to clarify technical terms.

Primary materials are read according to Indonesia's statutory hierarchy under Law Number 12 of 2011 on the Formation of Laws and Regulations, under which a statute takes precedence over a government or presidential regulation, the latter two implementing rather than displacing the statute from which they derive. Where two primary materials overlap, as with Article 17 and the chemical castration regime under Law Number 17 of 2016 and Government Regulation Number 70 of 2020, this study applies *lex specialis derogat legi generali*: since the latter regime governs offenses against child victims specifically, it displaces Article 17 only within that narrower scope. Where the TPKS Law and the National Penal Code overlap, as with the rehabilitation measures in Article 17 and in Articles 103 and 105, respectively, they are read systematically, as complementary expressions of the same double-track paradigm rather than competing norms.

To evaluate legal adequacy, this study applies a four-element doctrinal test derived from double-track sentencing theory, set out in full in the first results subsection below: a measure is legally adequate to the extent that it defines the type of measure, the criteria triggering its imposition, the authority responsible for implementation, and a consequence attaching to non-compliance. This test supplies the criteria of legal adequacy applied throughout and keeps doctrinal findings analytically separate from the policy recommendations developed later.

¹² Kristiawanto, *Pengantar Mudah Memahami Metode Penelitian Hukum* (Nas Media Pustaka, 2024), 14-18.

Three further boundaries are stated for reproducibility. The temporal range covers materials published between 2016 and 2026, supplemented by foundational Indonesian criminal law theory texts that predate this window, which establish doctrinal concepts, the double-track system, and the theory of legal effectiveness among them, which are still relied upon in the recent literature cited here. Primary materials were retrieved from official repositories, principally the state gazette database maintained by the Financial and Development Supervisory Agency (JDIH BPK) and the national legal information portal (peraturan.go.id), with secondary materials retrieved through publisher databases and their assigned DOIs, prioritizing outlets indexed in SINTA, Scopus, or an equivalent index. News media reports are used strictly to establish institutional facts, a figure an official disclosed at a hearing, for example, rather than as legal authority; any fact that could not be corroborated through an official source is flagged as unverified rather than presented as settled.

RESULTS AND DISCUSSION

The analysis proceeds in four stages, each building on the previous one. The first subsection establishes *das sollen* by stating the four-element doctrinal test and applying it to Article 17, the National Penal Code, and the adjacent chemical castration regime. The second subsection establishes *das sein*, the empirical record of how Article 17 has actually operated, strictly as a matter of current law. The third subsection explains the resulting gap using Soekanto's five-factor test of legal effectiveness. The fourth section turns to *de lege ferenda* proposals, testing a specific reform against a proportionality standard and specifying its operational elements. This sequence keeps the descriptive and prescriptive tasks separate throughout, consistent with the analytical technique stated in the Research Method above.

Das Sollen: Offender Rehabilitation as a Discretionary Norm

Article 17 of the TPKS Law is the central norm examined in this study. It provides that, in addition to a criminal sentence, an offender may be subjected to a measure in the form of rehabilitation, covering medical and social rehabilitation, coordinated by the public prosecutor and periodically supervised by the Ministry of Social Affairs and the Ministry of Health.¹³ Its elucidation adds that medical rehabilitation "includes psychiatric rehabilitation," which suggests that the legislature understood that some offenders need clinical and psychological intervention rather than punishment alone.¹⁴ This is consistent with Article 1(24) of the TPKS Law, which defines rehabilitation as an effort to restore physical, mental, and social conditions, applicable to victims and offenders alike.¹⁵ For consistency, this article uses the single term "rehabilitation measure" throughout to denote the *tindakan rehabilitasi* Article 17 authorizes, reserving "punishment" and "sanction" for the *pidana* track and "measure" or "*tindakan*" generically for the second track of the double track system discussed below.

¹³ Pasal 17 ayat 1 -3, Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

¹⁴ Pasal 17 ayat 2 huruf a, Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

¹⁵ Pasal 1 angka 24, Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

Before assessing Article 17 substantively, it is necessary to state the doctrinal test this study applies, since a bare recitation of the provision cannot by itself establish whether it is legally adequate. Drawing on the double-track sentencing theory discussed below, this study treats a rehabilitation measure as legally adequate to the extent that it satisfies four elements: (i) it names a defined type of measure; (ii) it specifies criteria that trigger imposition; (iii) it designates an authority responsible for implementation; and (iv) it attaches a consequence to non-compliance. Applying this test to Article 17: the provision satisfies element (i) in full, since it names rehabilitation and divides it into medical and social components. It does not satisfy element (ii), since the word "may" supplies no criteria for when the measure should be imposed rather than withheld. It satisfies element (iii) only partially, since it names the public prosecutor and the Ministries of Social Affairs and Health as coordinating and supervising bodies but specifies no mechanism for how that coordination actually occurs. It does not satisfy element (iv), since no provision attaches any consequence to the offender or to the responsible officials alike, if the measure is neither considered nor imposed. Article 17 therefore satisfies one of the four elements in full and one partly, a doctrinal finding, not a general impression, that anchors the *das sein* analysis in the following subsection.

Table 1. Rehabilitation and Related Measures Under the Three Instruments Examined

Instrument	Content and Trigger	Responsible Institution(s)	Procedural Safeguard	Consequence for Non-Imposition
Art. 17, TPKS Law (adult offenders)	Medical and social rehabilitation; "may" be imposed alongside punishment, no stated trigger	Public prosecutor (coordination); Ministries of Social Affairs and Health (supervision)	None specified in the text	None specified
Arts. 103, 105, National Penal Code	Measures, including rehabilitation, may accompany a principal sentence; Art. 105 keyed to addiction or "certain conditions"	Not specified for the sexual violence context; implementing regulations not yet issued	General double track requirement of judicial imposition	None specified
PP 70/2020 (child victims, chemical castration regime)	Chemical castration, electronic monitoring, rehabilitation, and identity disclosure following conviction	Multi-stage: clinical assessment team, prosecutor's execution request, court and Ministry of Health determination	Mandatory clinical assessment and staged determination before imposition	Execution procedure defined, though no qualified executor has agreed to perform it

Source: Authors' analysis of Article 17 of Law Number 12 of 2022, Articles 103 and 105 of Law Number 1 of 2023, and Government Regulation Number 70 of 2020.

The analytical implication of Table 1 is that legal adequacy under the four-element test does not track the severity of the measure. PP 70/2020, which authorizes the most invasive measure among the three, is also the only instrument that specifies a procedure and a determination pathway, even though it too fails on the fourth element once execution is reached, since no consequence attaches to the absence of a willing executor. Article 17, which authorizes the least invasive measure, specifies neither a trigger nor a consequence. This pattern is consistent with the doctrinal finding above: the gap this article identifies is a drafting gap in Article 17, specifically, not a general reluctance in Indonesian law to specify procedures for offender-directed measures.

Even so, a single word in Article 17, "may," determines the whole character of this norm. That word places rehabilitation within judicial discretion rather than treating it as a mandatory obligation. As a result, no mechanism compels law enforcement to impose the measure, and no legal consequence follows if it is never applied at all. Aryanti and Hartono note that this discretionary quality leaves offender rehabilitation as a norm that stays, in their words, largely normative: a legal ideal whose real force depends entirely on official willingness rather than on any structural guarantee of enforcement.¹⁶

A parallel provision appears in the National Penal Code. Article 103(1) lists measures that can accompany a primary sentence: counseling, rehabilitation, job training, institutional care, and reparation for the harm caused by the offense.¹⁷ Article 105 is more specific, stating that rehabilitation applies to a defendant addicted to alcohol, narcotics, psychotropic substances, or other addictive substances, and/or in "certain conditions," a phrase open enough to plausibly cover sexual violence offenders, though its elucidation is historically oriented toward addiction.¹⁸ The National Penal Code explicitly adopts a double-track system: punishment as retribution for wrongdoing and measures as a response to conditions in the offender that call for special handling, a paradigmatic break from the retributive character of the colonial era Penal Code toward a more corrective orientation. Because Article 105's elucidation is historically anchored in substance addiction, applying it to sexual violence offenders requires an analogical interpretation that judges may not apply consistently, a harmonization gap between the National Penal Code and the TPKS Law that the literature has not examined much.

The double-track system is more than a legislative drafting technique. It rests on the idea of a mono dualistic balance, which has been developed within Indonesian criminal law scholarship. Barda Nawawi Arief explains that the double-track system grew out of an attempt to reconcile two major schools of sentencing theory: the classical school, centered on culpability and retribution, and the modern school, centered on the offender's condition and the goal of protecting society. On this reading, punishment and measures are both necessary but rest on different

¹⁶ Aryanti dan Hartono, "Pengaturan Rehabilitasi Bagi Pelaku Kekerasan Seksual Dalam Perspektif Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual."

¹⁷ Pasal 103 ayat 1, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

¹⁸ Pasal 105 dan Penjelasannya, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

justifications: punishment is imposed because of fault (schuld), while a measure is imposed because of a condition inherent to the offender that calls for handling.¹⁹ Sholehuddin adds that, in an ideal double-track system, a measure should not be treated as a cosmetic add-on to punishment but as an instrument standing alongside it, with its own clear conditions and procedure for imposition.²⁰ Measured against this framework, Article 17 has not fully positioned rehabilitation as an independent second track. It is still drafted, textually, as an optional add-on to punishment ("in addition to a criminal sentence, an offender may be subjected to a measure"), not as a standing sanction track with criteria of its own. This theoretical reading helps explain why the norm is so easily overlooked in practice: by textual design, it was built as a supplement, not as a freestanding obligation.

Recent scholarship on the broader sentencing reform of the National Penal Code reaches a similar assessment from a different angle. Harefa, Ismawati, and Hertini, reviewing the Code's sentencing policy transformation as a whole, describe a code that aspires to a more just and humane sentencing system but whose practical realization depends on implementing regulations that remain incomplete.²¹ Agusta, Madjid, and Aprilianda, writing on the integration of supervision, punishment, and rehabilitation within a restorative justice frame, argue that Indonesian criminal law reform has so far articulated the concept of integration more clearly than the administrative mechanics needed to carry it out.²² Sirot and Soesatyo, surveying the broader direction of criminal law politics after the enactment of the Code, describe an unresolved tension between restorative and retributive impulses within the same reform project.²³ Applied to Article 17 specifically, this literature suggests that the doctrinal gap identified above is one instance of a broader pattern in Indonesia's recent criminal law reforms: rehabilitative ideals are stated with some confidence, while the machinery needed to operationalize them is left substantially to future regulation.

This domestic norm is consistent with the international human rights framework that Indonesia has ratified. Article 10(3) of the ICCPR requires that the penitentiary system of a state party be essentially aimed at the reformation and social rehabilitation of prisoners. The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, likewise state that the purpose of the prison system is to protect society from crime while reducing recidivism through rehabilitation, and that health care for prisoners, including

¹⁹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana perkembangan penyusunan konsep Kuhp baru*, 2 cet. 6 (Jakarta:Kencana, 2017), hlm. 109.

²⁰ M. Sholehuddin, *Sistem sanksi dalam hukum pidana : ide dasar Double Track System & implementasinya* (RajaGrafindo Persada, 2004), hlm. 4.

²¹ Safaruddin Harefa, Sri Ismawati, dan Mega Fitri Hertini, "Transformasi Kebijakan Pemidanaan Dalam Kuhp Nasional: Menuju Sistem Pemidanaan Yang Berkeadilan Dan Humanis," *Simbur Cahaya: Jurnal Ilmiah Ilmu Hukum*, 31 Desember 2025, 283–306, <https://doi.org/10.28946/sc.v32i2.5050>.

²² Dika Agusta, Abdul Majid, Nurini Aprilianda, "Reforming Indonesian Criminal Law: Integrating Supervision, Punishment, And Rehabilitation For Restorative Justice," *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* 7, no. 1 (2025): 54–68, <https://doi.org/10.47006/ijierm.v7i1.434>.

²³ M. Sirot dan Bambang Soesatyo, "New Directions for Criminal Law Politics Post-National Criminal Code Law: Between Restorative and Retributive Justice," *Greenation International Journal of Law and Social Sciences* 3, no. 3 (2025): 932–940, <https://doi.org/10.38035/gijlss.v3i3.581>.

psychological and psychiatric care, should be equivalent to what is available to the general public.²⁴ At the same time, the CEDAW Committee's General Recommendation No. 35 affirms a state's due diligence obligation to prevent, investigate, prosecute, punish, and provide reparation for gender-based violence, an obligation the Committee has said has become a principle of customary international law.²⁵ Indonesia ratified CEDAW through Law Number 7 of 1984 and the ICCPR through Law Number 12 of 2005.

It is worth stressing that Article 17 of the TPKS Law must be clearly distinguished from the chemical castration provision under Law Number 17 of 2016 on the Second Amendment to the Child Protection Law, in conjunction with Government Regulation Number 70 of 2020. This regime applies specifically to perpetrators of sexual violence against children and covers chemical castration, electronic monitoring, rehabilitation, and public disclosure of the offender's identity, carried out in three stages: clinical assessment, conclusion, and implementation.²⁶ The Convention against Torture (CAT), ratified by Indonesia through Law Number 5 of 1998, is the main reference for those who question chemical castration as a potentially cruel and inhuman punishment, a debate that concerns something quite different from the rehabilitation issue under Article 17, which is restorative rather than punitive in character.²⁷ These two regimes are often conflated in public discourse as well as in academic literature, even though they differ in legal basis, subject, and purpose. Kartono and Mulyana, examining the implementation of chemical castration penalties against perpetrators of crimes against children, document obstacles under that adjacent regime that closely resemble the ones this article documents for Article 17, including delayed technical guidance and resistance from the medical profession.²⁸ Even the more severe measure, in other words, has struggled to move from statute to practice, reinforcing this article's point that the problem lies with the implementation machinery rather than with the choice between rehabilitative and punitive measures.

Rehabilitation is not the only remedial obligation created by the provisions surrounding Article 17. Article 70 of the TPKS Law separately guarantees victims restitution, and recent scholarship suggests that this guarantee faces implementation problems that parallel, without being identical to, those documented above for offender rehabilitation. Endyka et al., reviewing the legal basis for restitution under the TPKS Law, find that the right is secured in principle,

²⁴ United Nations Office on Drugs and Crime, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Vienna: UNODC, 2015), Rules 4 and 24-25.

²⁵ Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19, CEDAW/C/GC/35 (2017), para. 24

²⁶ Pasal 4-8, Peraturan Pemerintah Nomor 70 Tahun 2020.

²⁷ Hafrida Hafrida, "PRO KONTRA SANKSI KEBIRI KIMIA: SA NAKSI YANG PROGRESIF ATAU PRIMITIF?," Indonesia Criminal Law Review 1, no. 1 (2021), <https://scholarhub.ui.ac.id/iclr/vol1/iss1/2>.

²⁸ Kartono Kartono dan Aji Mulyana, "The Implementation of Chemical Castration Penalties towards Paedophilia Crime Perpetrators," Fiat Justisia: Jurnal Ilmu Hukum 13, no. 4 (2019): 321-32, <https://doi.org/10.25041/fiatjustisia.v13no4.1683>.

but its practical fulfillment remains inconsistent.²⁹ A broader version of the same conclusion comes from Ali et al., who identify regulatory flaws and an uneven judicial response as the principal obstacles to compensation and restitution for crime victims across Indonesian law generally.³⁰ For domestic sexual violence victims, specifically, Hendro et al. frame restitution as an instrument of justice whose realization depends on institutional will as much as on the text of the law.³¹ Azzahra and Lubis add a comparative angle, contrasting Indonesia's restitution mechanism with Thailand's and finding Indonesia's procedure less clearly specified at the enforcement stage.³² Novrian pushes this point further from a practitioner's perspective, arguing for more consistent enforcement of restitution obligations within the Indonesian criminal legal system.³³ Two further studies extend the same pattern beyond restitution narrowly defined. Muharomah and Indawati, studying victim recovery services delivered through a regional technical implementation unit for the protection of women and children, find that legal entitlement to recovery services translates unevenly into practice, depending heavily on local institutional capacity,³⁴ and Mawarni et al., examining legal protection for child victims of sexual violence under positive Indonesian law through a specific court decision, reach a parallel conclusion: formal protection exists, but its realization in practice depends on how consistently individual courts choose to apply it.³⁵ Read together, this body of literature indicates that Article 17's implementation gap is not an isolated defect in the TPKS Law's design: a comparable pattern, formal entitlement without a fully specified enforcement pathway, recurs on the victim side of the same statute, and that parallel is a further reason the reform proposed in the final results subsection is conditioned on preserving, rather than competing with, the victim-centered guarantees Article 70 already provides.

Das Sein: An Implementation Reality Practice Has Not Yet Reached

²⁹ Delvasta Caesar Endyka, et.al., "Efektivitas Undang-Undang TPKS Dalam Menjamin Hak Restitusi Korban Kekerasan Seksual: Sebuah Tinjauan Yuridis," *ULIL ALBAB: Jurnal Ilmiah Multidisiplin* 5, no. 6 (2026): 1268–75, <https://doi.org/10.56799/jim.v5i6.17299>.

³⁰ Mahrus Ali, et.al., "Compensation and restitution for victims of crime in indonesia: Regulatory flaws, judicial response, and proposed solution," *Cogent Social Sciences* 8, no. 1 (2022): 2069910, <https://doi.org/10.1080/23311886.2022.2069910>.

³¹ Hendro Widodo, Anis Mashdurohatun, Kristiawanto, Andrianto Budi Santoso, dan Derick Yunanda, "Restitution as an Instrument of Justice for Victims of Domestic Sexual Violence: A Study of Positive and Islamic Law in the Contemporary Era," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 676–99, <https://doi.org/10.32332/milrev.v4i1.10436>.

³² Jazmine Azzahra dan Muhammad Teguh Syuhada Lubis, "Mekanisme Pelaksanaan Restitusi Terhadap Korban Kekerasan Seksual (Studi Komparatif Hukum Di Indonesia Dan Thailand)," *Legal Standing : Jurnal Ilmu Hukum* 9, no. 1 (2025): 117–30, <https://doi.org/10.24269/lis.v9i1.11387>.

³³ Bayu Novrian, "The Urgency of Enforcing Retitution Obligations for Victims of Sexual Violence in the Indonesian Criminal Legal System.," *KnE Social Sciences* 10, no. 28 (2025): 1, <https://doi.org/10.18502/kss.v10i28.20148>.

³⁴ Prima Rizky Aishah Muharomah, "Pemulihan Anak Korban Kekerasan Seksual Melalui Layanan Pendampingan oleh Unit Pelaksana Teknis Daerah Perlindungan Perempuan dan Anak Kabupaten Sidoarjo," *Jurnal Hukum Lex Generalis* 6, no. 7 (2025), <https://doi.org/10.56370/jhlg.v6i7.915>.

³⁵ Wiwin Mawarni, Rahmatul Hidayati, dan Abdul Rokhim, "Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual Menurut Hukum Positif Di Indonesia (Analisis Putusan Nomor 320/Pid.Sus/2022/PN.Kpn)," *JURNAL MERCATORIA* 16, no. 1 (2023): 13–30, <https://doi.org/10.31289/mercatoria.v16i1.9107>.

The analysis in this subsection is confined to the law as it currently stands (*de lege lata*): it reports what the available evidence shows about how Article 17 has operated since enactment. Proposals for how the norm might be reformed (*de lege ferenda*) are deliberately withheld until the final results subsection below, so that empirical findings about current practice are not blended with recommendations for future practice.

A search of publicly available legal materials did not turn up a single court decision that explicitly imposed Article 17 rehabilitation measures on adult offenders. This absence needs to be stated carefully. It is a finding about the limits of what is publicly searchable, not a claim that such an outcome has never happened at all. Further verification would require access to internal data from the Attorney General's Office, the Witness and Victim Protection Agency, or the Ministry of Social Affairs, all of which lie outside the reach of the public legal materials used in this study. Even so, the absence of any publicly traceable decision, on a norm that has now been in force for more than three years, is strong evidence that Article 17 has not become standard judicial practice.

Decisions often mistaken for applications of Article 17 in fact come from a different legal regime. The Mojokerto District Court's decision Number 69/Pid. Sus/2019/PN.Mjk sentenced a defendant who had raped nine children between 2015 and 2018 to twelve years in prison, a fine of one hundred million rupiah, and chemical castration. Its legal basis, however, was Article 76D in conjunction with Article 81 of the Child Protection Law and Law Number 17 of 2016, not Article 17 of the TPKS Law, which had not even come into force when the decision was handed down in May 2019.³⁶ This decision is useful as an illustration of a broader pattern: the actual execution of the chemical castration measure in this case was delayed because the implementing mechanism was not yet in place when the decision was issued, and the convict reportedly refused to undergo it.³⁷ Even under the chemical castration regime, where a final decision exists, actually carrying out an additional measure still runs into structural obstacles.

The same structural obstacles, on an even larger scale, weigh on Article 17 of the TPKS Law. The law mandates that seven implementing regulations be issued within two years of enactment.³⁸ In practice, those regulations have come out in fits and starts. Presidential Regulation Number 9 of 2024, on education and training for law enforcement officers and service personnel, was issued in January 2024. Presidential Regulation Number 55 of 2024, on Regional Technical Implementation Units for the Protection of Women and Children, was issued in April 2024. Government Regulation Number 27 of 2024, on coordination and monitoring, was issued in July 2024. Government Regulations Number 29 and 30 of 2025, on victim assistance funding and on prevention, handling, protection, and recovery of victims, respectively, were issued in June 2025.³⁹ According to Hukumonline's reporting in

³⁶ Pengadilan Negeri Mojokerto, Putusan Nomor 69/Pid.Sus/2019/PN.Mjk, perihal persetubuhan terhadap anak, Putusan Nomor 695/PID.SUS/2019/PT.SBY, (2019).

³⁷ Enggran Eko Budianto, "Predator Anak yang Dihukum Kebiri Kimia Dikurung di Sel Isolasi," *detiknews*, diakses 25 Mei 2026, <https://news.detik.com/berita-jawa-timur/d-4681567/predator-anak-yang-dihukum-kebiri-kimia-dikurung-di-sel-isolasi>.

³⁸ Pasal 91, Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

³⁹ Peraturan Presiden Nomor 9 Tahun 2024; Peraturan Presiden Nomor 55 Tahun 2024; Peraturan Pemerintah Nomor 27 Tahun 2024; Peraturan Pemerintah Nomor 29 Tahun 2025; dan

October 2025, one more implementing regulation, a Presidential Regulation on the National Policy for Eradicating Sexual Violence Crimes, was still being drafted, well past the two-year deadline set by the law itself.⁴⁰

Another institutional problem that directly undermines the capacity to carry out rehabilitation measures is prison overcrowding. Mashudi, the Director General of Corrections, told a hearing with Commission XIII of the House of Representatives on 8 June 2025 that Indonesia's prisons and detention centers together held 272,572 people against an available capacity of only 146,860, putting the overcrowding rate at 86 percent nationally.⁴¹ Transformation data from the Ministry of Immigration and Corrections as of 24 January 2025 show a comparable figure: 273,130 inmates against a capacity of 146,053, or 87.01 percent overcrowding.⁴² This condition plausibly matters for rehabilitation, since the counseling and rehabilitation programs required under Article 17, including psychological and psychiatric services, can reasonably be expected to depend in practice on staff to inmate ratios and on adequate space and facilities, though no institution-level data on Article 17 programming specifically is available to confirm this directly. By comparison, the same data show 7,908 people completed narcotics rehabilitation programs between October and December 2024, evidence that state rehabilitation capacity does exist, but secondary sources indicate it has historically been concentrated on narcotics addicts rather than sexual violence offenders, an allocation gap worth noting.

A more specific obstacle concerns chemical castration. Although it belongs to a different regime than Article 17, it still illustrates a broader pattern of failure to carry out additional measures. Under Ethics Council Fatwa Number 1 of 2016, the Indonesian Medical Association (IDI) objected on ethical grounds to doctors being involved in administering chemical castration, leaving a vacuum of qualified executors that has not been fully resolved to this day.⁴³ Erasmus Napitupulu, Executive Director of the Institute for Criminal Justice Reform, has also criticized Government Regulation Number 70 of 2020 as a populist policy that fails to prioritize victim recovery.⁴⁴

Peraturan Pemerintah Nomor 30 Tahun 2025, sebagaimana dikonfirmasi oleh Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, "Lindungi Korban Kekerasan Seksual, Pemerintah Kembali Terbitkan Satu Peraturan Turunan UU TPKS."

⁴⁰ Hanifah Dwi Jayanti, "KemenPPPA Masih Proses Peraturan Pelaksana UU TPKS Soal Kebijakan Nasional Pemberantasan TPKS," [hukumonline.com](https://www.hukumonline.com/berita/a/kemenpppa-masih-proses-peraturan-pelaksana-uu-tpks-soal-kebijakan-nasional-pemberantasan-tpks-lt68e7bf39125b8/), diakses 25 Mei 2026, <https://www.hukumonline.com/berita/a/kemenpppa-masih-proses-peraturan-pelaksana-uu-tpks-soal-kebijakan-nasional-pemberantasan-tpks-lt68e7bf39125b8/>.

⁴¹ "Dirjen PAS Ungkap Lapas-Rutan 'Overcrowding': Kapasitas 146 Ribu, Diisi 272 Ribu," kumparan, diakses 25 Mei 2026, <https://kumparan.com/kumparannews/dirjen-pas-ungkap-lapas-rutan-overcrowding-kapasitas-146-ribu-diisi-272-ribu-27YYHopx2Zd>.

⁴² Komunikasi Publik, "Transformasi Kementerian Imigrasi dan Pemasarakatan," Kementerian Imigrasi dan Pemasarakatan RI, 31 Januari 2025, <https://kemenimipas.go.id/berita-utama/transformati-kementerian-imigrasi-dan-pemasyarakatan>.

⁴³ "Efektifkah Hukuman Tambahan Kebiri Kimia Pada Pelaku Kekerasan Seksual Di Indonesia?," diakses 25 Mei 2026, <https://www.abc.net.au/indonesian/2021-01-06/efektifkah-kebir-kimia-pada-pelaku-kekerasan-seksual-indonesia/13036592>.

⁴⁴ Nathalina Naibaho/Tunggal S, "Polemik Kebiri Kimia bagi Pelaku Kekerasan Seksual," [hukumonline.com](https://www.hukumonline.com/berita/a/polemik-kebir-kimia-bagi-pelaku-kekerasan-seksual-lt60191b7c4187b/), diakses 24 Mei 2026, <https://www.hukumonline.com/berita/a/polemik-kebir-kimia-bagi-pelaku-kekerasan-seksual-lt60191b7c4187b/>.

At the level of general criminal procedure, a study by the Indonesia Judicial Research Society on sentencing disparities in sexual violence cases found that socialization of the TPKS Law and Supreme Court Regulation Number 3 of 2017 among judges in various regions remains weak, and that few decisions have ordered restitution from defendants.⁴⁵ This finding, though not specific to Article 17, reinforces the same pattern: the TPKS Law as a whole faces a systemic implementation gap, not merely a problem confined to one provision. Three further studies point the same way. Nitha and colleagues, reviewing the implementation of the TPKS Law overall, find that patriarchal culture, weak law enforcement sensitivity, and limited victim recovery facilities continue to blunt the Law's effect regardless of what the statute itself provides.⁴⁶ Suryantoro, assessing legal protection for rape victims under the TPKS Law specifically, likewise reports that formal protection exists but its effectiveness in practice remains limited.⁴⁷ Suprpto and Putra, examining how the integrated criminal justice system treats sexual violence victims, describe a shift in stated paradigm that has not yet been matched by a corresponding shift in institutional practice.⁴⁸ None of these three studies focuses on offender rehabilitation specifically, but each documents the same structural pattern this article identifies for Article 17: statutory ambition that has outpaced institutional capacity to deliver it.

An imbalance in scholarly attention reinforces this picture of a gap. Nabilah and Ramadhani, for instance, have already built a fairly detailed rehabilitation model for child perpetrators of sexual violence under the TPKS Law, grounded in the best interests of the child principle.⁴⁹ A model of this kind, complete with assessment stages, types of intervention, and lines of responsibility, has no real counterpart for adult offenders under Article 17. Sufaat goes further, explicitly proposing an ideal formulation for offender rehabilitation measures grounded in justice values, a proposal that essentially concedes that the current formulation is not yet ideal.⁵⁰ As a matter of *de lege lata* description, proposals like these are indirect but fairly clear evidence that a technical vacuum currently exists in how Article 17 is applied. Legal researchers have felt the need to fill that vacuum through

⁴⁵ Indonesia Judicial Research Society, "Disparitas Pemidanaan: Menyoroti Konsistensi Putusan Pengadilan dalam Tindak Pidana Kekerasan Seksual," IJRS, diakses 24 Mei 2026, <https://ijrs.or.id/2024/04/01/disparitas-pemidanaan-menyoroti-konsistensi-putusan-pengadilan-dalam-tindak-pidana-kekerasan-seksual/>.

⁴⁶ Fitha Ayun Lutvia Nitha, et.al., "Optimalisasi Implementasi uu Tpk: Tantangan dan Solusi dalam Upaya Penghapusan Kekerasan Seksual di Indonesia," *Masalah-Masalah Hukum* 53, no. 1 (2024): 90–100, <https://doi.org/10.14710/mmh.53.1.2024.90-100>.

⁴⁷ Dwi Dasa Suryantoro, "Efektivitas Perlindungan Hukum terhadap Korban Pemerkosaan dalam undang-undang Tindak Pidana Kekerasan Seksual (UU TPKS)," *USRAH: Jurnal Hukum Keluarga Islam* 5, no. 2 (2024): 298–309, <https://doi.org/10.46773/usrah.v5i2.1427>.

⁴⁸ Josephine Suprpto dan Made Aditya Pramana Putra, "Shifting Paradigms of Sexual Violence Victims within the Integrated Criminal Justice System in Indonesia," *International Journal of Business, Law, and Education* 7, no. 2 (2026): 1303–1314, <https://doi.org/10.56442/ijble.v7i2.1511>.

⁴⁹ Eva Albatun Nabilah dan Berthi Ramadhani P, "Model Rehabilitasi Anak Pelaku Kekerasan Seksual Pasca Undang-Undang No. 12 Tahun 2022 Berdasarkan Prinsip Kepentingan Terbaik Bagi Anak," *Esensi Hukum* 7, no. 1 (2025): 1–17, <https://doi.org/10.35586/esensihukum.v7i1.465>.

⁵⁰ Desfina Intan Putri Sufaat, "Ideal Formulation for Providing Rehabilitation Measures for Perpetrators of Sexual Violence Based on Justice Values," *Ratio Legis Journal* 5, no. 2 (2026): 3456–3465, <https://doi.org/10.30659/rjlj.5.2.%25p>.

conceptual scholarship, which is a symptom of the gap rather than a substitute for the implementing regulation the gap actually requires. Whether and how that vacuum should be filled is a *de lege ferenda* question taken up in the final results subsection below.

A closely related body of scholarship on marital rape offers convergent evidence for the *das sein* finding above, even though it examines a different statutory context. Kasuma and colleagues, who studied rehabilitation for marital rape offenders under Indonesian law, reported that the absence of a specialized regulatory basis for offender rehabilitation had left judges without precedent for imposing mandatory counseling, and that no court decision in their study period had sentenced an offender to counseling as part of its ruling.⁵¹ This finding, reached independently and in a different doctrinal context, mirrors this study's own inability to locate a published ruling applying Article 17 to an adult offender, and lends outside support to the broader proposition that Indonesian courts lack a settled practice of imposing offender-directed rehabilitative measures in sexual violence cases generally, not only under the specific provision this article examines.

Explaining the Gap: A Discretionary Norm Inside an Unready System

To explain the gap between *das sollen* and *das sein* more systematically, this section borrows Soerjono Soekanto's classic framework on the factors that shape the effectiveness of law enforcement: the law itself, law enforcement officials, supporting facilities and resources, the community, and legal culture.⁵² According to Soekanto, these five factors are closely interconnected, so weakness in one tends to spread and weaken the others. The choice of this particular framework for a sexual violence case is not idiosyncratic. Suryanto, Arresti, and Makky applied the same five-factor framework to explain why online public pressure, rather than formal law enforcement, has come to drive outcomes in Indonesian sexual violence cases, framing the underlying problem in the same *das sollen*-*das sein* terms used here.⁵³ That a second, independent study reached for Soekanto's framework to explain a closely related gap lends some external support to its fit for the problem at hand. The findings from the previous section can be mapped onto four of the five factors, and that mapping helps explain why the gap identified here is systemic rather than a single failure that one intervention could fix.

On the law itself, the problem is the discretionary character of the norm discussed earlier. The word "may" in Article 17 leaves the decision to impose rehabilitation entirely to judicial discretion, with no standard guidance on when the measure should actually be applied. Verennestya and Mahardhika rightly describe this as a normative vacuum at the technical level: the Law names the type of measure but never spells out the conditions, procedure, or mechanism for carrying it out. Read together with the double-track system analysis above, the problem here is not

⁵¹ Iva Kasuma, et.al., "Another Second Chance: Rehabilitation of Marital Rape Offender for the Victim's Recovery," *The Indonesian Journal of Socio-Legal Studies* 1, no. 2 (2022), <https://doi.org/10.54828/ijsls.2021v1n2.4>.

⁵² Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum* (Raja Grafindo Persada, 2019), hlm. 8.

⁵³ Muhammad Handika Suryanto, et.al., "No Viral No Justice Perspektif Teori Efektivitas Hukum Soerjono Soekanto," *Widya Yuridika: Jurnal Hukum* 7, no. 3 (2024): 513–522, <https://doi.org/10.31328/wy.v7i3.5076>.

simply the absence of an obligation, but the absence of any status for rehabilitation as a sanction track standing alongside punishment.

Two findings are relevant to law enforcement officials. First, implementing regulations that would set out coordination between prosecutors, the Ministry of Social Affairs, and the Ministry of Health as required by Article 17(3) were delayed. Second, socialization of the TPKS Law among judges in various regions remains weak, as the Indonesia Judicial Research Society study notes. Without technical guidance and adequate understanding among officials, it is hard to imagine rehabilitation being imposed consistently, even in cases that substantively meet the criteria for it.

Facilities and resources appear to be the most severely disrupted factor, and this is neither a new nor a temporary problem. The Institute for Criminal Justice Reform warned as early as 2018 that Indonesia's prisons and detention centers had reached a state of extreme overcrowding, and recommended reforming sentencing policy as the only sustainable way out, rather than simply building more facilities.⁵⁴ Hamja, in a more recent study, confirms that Indonesia's legal and judicial system still contributes actively to overcrowding through the sheer volume of regulations that favor a punitive function (custodial sentences) over a rehabilitative one, and recommends a legal transformation toward non custodial alternatives as a long-term solution.⁵⁵ Yofarrel traces the same overcrowding problem to a structural cause: a criminal policy that still routinely imprisons minor and non-violent offenders, narcotics users foremost among them, rather than diverting them to non-custodial or rehabilitative alternatives, which leaves specialized facilities and staff perpetually absorbed by a population that a better-targeted sentencing policy would not have sent to prison in the first place.⁵⁶ Cahyadi and Sulaiman frame the same overcrowding problem explicitly as a human rights issue rather than a purely administrative one, arguing that legal reform to reduce capacity pressure is inseparable from safeguarding the rights of those already incarcerated.⁵⁷ Ruwaida, Amiruddin, and Pancaningrum, examining criminal social work as an alternative to imprisonment under the National Penal Code, argue that community-based alternatives could relieve the same capacity pressure that constrains rehabilitation programming generally, offender rehabilitation under Article 17 among them.⁵⁸ Recommendations like these, aimed at the overcrowding problem in general, also

⁵⁴ ICJR, Strategi Menangani Overcrowding Di Indonesia: Penyebab, Dampak Dan Penyelesaiannya -, diakses 25 Mei 2026, <https://icjr.or.id/strategi-menangani-overcrowding-di-indonesia-penyebab-dampak-dan-penyelesaiannya/>.

⁵⁵ Hamja Hamja, "PEMBARUAN KEBIJAKAN PEMIDANAAN DALAM RANGKA MENGATASI FAKTOR PENYEBAB OVERCROWDING LEMBAGA PEMASYARAKATAN DI INDONESIA," Masalah-Masalah Hukum 53, no. 3 (2024): 261–270, <https://doi.org/10.14710/mmh.53.3.2024.261-270>.

⁵⁶ Mohammad Yofarrel, "Kriminalisasi Berlebihan (Overcriminalization) Sebagai Faktor Struktural Overcrowding Lapas Dalam Sistem Peradilan Pidana," UNES Law Review 8, no. 1 (2025): 151–162, <https://doi.org/10.31933/unesrev.v8i1.2504>.

⁵⁷ Dedy Cahyadi dan Abdullah Sulaiman, "The Role of Legal Reform in Addressing Prison Overcrowding and Strengthening The Guarantee of Inmates' Human Rights," Greenation International Journal of Law and Social Sciences 3, no. 2 (2025): 205–212, <https://doi.org/10.38035/gijlss.v3i2.414>.

⁵⁸ Sitti Ruwaida, Amiruddin, dan Rina Khairani Pancaningrum, "Criminal Social Work as an Alternative to Criminal Punishment in Indonesia Based on the National Criminal Code," International Journal of Judicial Law 5, no. 3 (2026): 162–69, <https://doi.org/10.54660/IJJL.2026.5.3.162-169>.

function as an indirect prerequisite for Article 17's success. As long as prisons and detention centers remain overcrowded, room for specialized rehabilitation programs, which require time, trained staff, and adequate physical facilities, will always be crowded out by the basic need to maintain order and security.

The absence of a ready executor under the adjacent chemical castration regime is, in a broader sense, part of the same facilities problem. Facilities are not just buildings and budgets. They also mean the willingness of trained professionals to carry out what the law orders. IDI's refusal shows that policymakers do not always consult the readiness of the party expected to implement a measure before writing the norm. That oversight could easily recur with Article 17 rehabilitation if the Ministry of Health and the Ministry of Social Affairs fail to build adequate psychological and psychiatric service capacity before the courts start applying the norm consistently.

Regarding community and legal culture, the Institute for Criminal Justice Reform's criticism of Government Regulation Number 70 of 2020 as a populist policy that does not prioritize victims points to something worth considering, stated here as an interpretation rather than an observed fact. Public discourse on sexual violence in Indonesia appears, based on the secondary sources reviewed, to favor visibly tough responses, long imprisonment, chemical castration, and public disclosure of the offender's identity over support for long-term investment in offender rehabilitation, whose results are not immediately visible and are harder to translate into a popular political win. If that pattern holds, a legal culture that values visible retribution over invisible correction could create a structural disincentive for legislators and budget holders to prioritize offender rehabilitation infrastructure, which in turn could help keep Article 17 from being applied, regardless of how well its implementing regulations are drafted. This study did not collect data capable of confirming that causal pathway, and it is offered as a plausible interpretation of the pattern documented above rather than as a demonstrated finding.

Comparison with international evidence confirms that these four factors, not any failure in the concept of rehabilitation itself, explain Indonesia's gap. A meta-analysis by Schmucker and Lösel covering 27 studies found that specialized rehabilitation programs effectively reduce sexual recidivism among offenders who complete them, with the largest effect among high-risk offenders.⁵⁹ An earlier meta-analysis by Lösel and Schmucker, covering 69 studies with more than 22,000 participants, found sexual recidivism of approximately 11.1% among offenders who underwent rehabilitation, compared to 17.5% among those who did not.⁶⁰ A more recent systematic review by Beaudry and colleagues, covering several randomized controlled trials of psychological interventions in prison and published in *The Lancet Psychiatry*, likewise found an association between such interventions and reduced recidivism, although the size of the effect varied by intervention type and

⁵⁹ Martin Schmucker dan Friedrich Lösel, "Sexual Offender Treatment for Reducing Recidivism among Convicted Sex Offenders: A Systematic Review and Meta-Analysis," *Campbell Systematic Reviews* 13, no. 1 (2017): 1–75, <https://doi.org/10.4073/csr.2017.8>.

⁶⁰ Friedrich Lösel dan Martin Schmucker, "The Effectiveness of Treatment for Sexual Offenders: A Comprehensive Meta-Analysis," *Journal of Experimental Criminology* 1, no. 1 (2005): 117–146, <https://doi.org/10.1007/s11292-004-6466-7>.

target population.⁶¹ Taken together, this evidence suggests, though it does not prove for the Indonesian context specifically, that offender rehabilitation can work when it is genuinely carried out with adequate resources. Article 17's failure to reach practice is accordingly better read as a failure of the factors that should support its implementation than as evidence against the underlying idea, a doctrinal reading of the international evidence rather than a claim that Indonesian implementation would necessarily replicate results obtained elsewhere.

Comparative experiences beyond Uruguay reinforce the same lesson regarding institutional designs. Minoura, examining Japan's probation system, finds that effective offender rehabilitation depends on structured cooperation between professional and volunteer probation officers, an institutional design considerably more developed than anything that Article 17 currently contemplates.⁶² Fang, studying community-based non-custodial sentencing under the Cameroonian criminal justice system, reports that such measures can ease the strain on prison capacity while still protecting the rights of those under supervision, provided the state invests in the institutional infrastructure the measures require. This proviso speaks directly to the facilities problem identified above in the Indonesian case.⁶³ A national survey reported by Richards and Chataway, examining victim and survivor views of post-custodial measures for people convicted of sexual offenses, found that victim support for such measures is conditional rather than automatic; it depends on transparency about how the measures are monitored and enforced.⁶⁴ This finding reinforces the insistence of this article, in the proportionality analysis below, that any reform to Article 17 preserves rather than dilutes the victim-centered safeguards already secured elsewhere in the TPKS Law.

Restorative Justice and the Prospects for Reformulating the Norm

Having established the *de lege lata* position in the two preceding subsections, that Article 17 satisfies only one of the four doctrinal elements in full and that institutional capacity is deficient on four of Soekanto's five factors, this subsection turns to *de lege ferenda* proposals for closing the gap identified by those findings.

The tension between *das sollen* and *das sein* described above has not gone entirely unnoticed. A number of researchers have put forward proposals that, read together, point toward a possible direction for reform. Ibipurwo, Wibowo, and Setiawan placed offender rehabilitation within a broader restorative justice framework, arguing that preventing repeated sexual violence cannot rely solely on the deterrent effect of punishment and also requires intervention that changes an

⁶¹ Gabrielle Beaudry, et.al., "Effectiveness of Psychological Interventions in Prison to Reduce Recidivism: A Systematic Review and Meta-Analysis of Randomised Controlled Trials," *The Lancet Psychiatry* 8, no. 9 (2021): 759–773, [https://doi.org/10.1016/S2215-0366\(21\)00170-X](https://doi.org/10.1016/S2215-0366(21)00170-X).

⁶² Satoshi Minoura, "Offender Rehabilitation Reform in Japan: Effective Cooperation between Professional and Volunteer Probation Officers," *International Journal of Law, Crime and Justice* 54 (September 2018): 111–120, <https://doi.org/10.1016/j.ijlcrj.2018.03.004>.

⁶³ Kum Elvis Fang, "Community-Based Non-Custodial Sentences Under the Cameroon Criminal Justice System and Its Effects on Prisoners' Rights," *Studies in Law and Justice* 5, no. 1 (2026): 88–105, <https://doi.org/10.63593/SLJ.2026.03.06>.

⁶⁴ Kelly Richards dan Michael Chataway, "Victim/Survivors' Views of Sexual Violence Post-Custodial Measures for People with Convictions for Sexual Offending: Results from a National Survey," *Victims & Offenders*, 17 Maret 2026, 1–17, <https://doi.org/10.1080/15564886.2026.2640467>.

offender's thinking and behavior.⁶⁵ This reading fits the paradigm shift discussed earlier but also carries a warning. Restorative justice in the context of sexual violence differs from its application to other offenses because restoring the offender must never come at the expense of restoring the victim's recovery and sense of safety. Offender rehabilitation should therefore run alongside, not in place of, the victim recovery mechanisms already set out in detail elsewhere in the TPKS Law.

Aditya, Karauwan, and Junaedy, examining the TPKS Law's implications for Indonesia's criminal justice process, invoke the same *das sollen*-*das sein* distinction used here in describing the gap between what the Law promises and how it is applied, and identify law enforcement readiness, inter-agency coordination, and limited victim recovery facilities as the principal obstacles, although their study does not focus specifically on Article 17.⁶⁶ This methodological convergence, more than one researcher independently invoking the same distinction to examine the TPKS Law, strengthens the suspicion that the norm practice gap is a structural feature of the Law as a whole rather than a coincidence limited to a single provision.

At the level of solutions, two directions for reform look most promising based on the literature reviewed above. The first is strengthening the imperative character of the norm under certain conditions, for example, by defining objective criteria such as the type of violence, the offender's history, or the results of an initial psychological assessment, that once met would require a judge to consider a rehabilitation measure instead of leaving it entirely to unguided discretion. Sufaat's proposed ideal formulation points in a similar direction: offender rehabilitation should be drafted with justice values built into more precise criteria, not merely listed as an option with no criteria attached. The second is syncing with the model already developed under an adjacent regime. The child offender rehabilitation model proposed by Nabilah and Ramadhani could serve as a starting point, though not a direct blueprint given the psychological and legal differences between child and adult offenders, for drafting the technical guidance for adult offender rehabilitation that is still missing.

The first reform direction, replacing unguided discretion with defined triggering criteria, should itself be tested against a proportionality standard before it is treated as sound doctrine rather than mere preference. On suitability, defining objective criteria is capable of achieving the stated aim, since it directly targets the doctrinal deficiency identified in element (ii) of the test set out above, the absence of triggering criteria, so its capacity to close that specific gap is not in doubt. On necessity, no less restrictive alternative achieves the same result: relying on general judicial training or non-binding guidance, an alternative sometimes proposed elsewhere in the literature, addresses only the law enforcement officials factor in Soekanto's framework, leaves the text of the norm unchanged, and offers no assurance that discretion will be exercised consistently across courts. Only a change to the criteria themselves closes the specific gap the doctrinal test identifies. On proportionality in the strict sense, the reform must be bounded so that it does not

⁶⁵ Guruh Tio Ibipurwo, Yusuf Adi Wibowo, dan Joko Setiawan, "Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restoratif," *Jurnal Hukum Republica* 21, no. 2 (2022): 155–178.

⁶⁶ Rifqi Aditya, et.al., "IMPLIKASI UNDANG-UNDANG TINDAK PIDANA KEKERASAN SEKSUAL (UU TPKS) TERHADAP PROSES PERADILAN PIDANA DI INDONESIA," *Kabillah* 9, no. 2 (2024): 22–31.

overcorrect. Criteria that were absolute, automatically mandating rehabilitation whenever a defined condition is met, would risk displacing judicial discretion in cases where a court is better placed to weigh case-specific facts. Such criteria could also, in principle, be invoked in a way that diverts resources from the victim-centered measures the TPKS Law already secures, such as restitution and victim rehabilitation under Article 70. To remain proportionate, any reform should therefore take the form of a rebuttable presumption rather than an absolute rule. Once the defined criteria are met, a court would be required to consider rehabilitation and to give reasons for declining it, while retaining final discretion over whether to impose it. The reform should also be drafted so that it cannot be read to reduce or condition any entitlement already secured to victims elsewhere in the Law. Framed this way, the proposal is suitable, necessary, and appropriately limited, and it does not trade victim protection for offender rehabilitation capacity.

Table 2. Operational Elements of the Proposed Rebuttable Presumption Model

Element	Proposed Specification
Responsible institution	The court, on the prosecutor motion filed under Article 17(3); the Ministries of Social Affairs and Health remain responsible for supervision post-imposition
Trigger	A defined condition is met, for example the offense involves a minor, the offender has a prior sexual offense finding, or a pre-sentencing psychological assessment recommends treatment
Timeframe	Assessment completed and motion filed before sentencing, consistent with the timeline already used for restitution motions under Article 70
Evidentiary threshold	A documented pre-sentencing assessment by a Ministry of Health designated professional, based on the assessment clinical findings, not a criminal standard of proof
Review mechanism	A reasoned written finding where the court declines to impose the measure once the trigger is met, reviewable on appeal on the same basis as other sentencing determinations
Remedy	No remedy running to the offender, since imposition is not itself a right; for victims, the reasoned finding requirement enables oversight bodies, including Komnas Perempuan, to monitor non-imposition patterns over time

Source: authors' proposal, derived from the doctrinal test in Table 1 and the proportionality analysis above; not a reform already adopted or tested.

Specifying these operational elements distinguishes a policy model from a general recommendation. Each element in Table 2 answers a question the current text of Article 17 leaves open, and each is drawn directly from mechanisms the TPKS Law already uses elsewhere: the restitution motion timeline under Article 70, the Ministry of Health's existing supervisory role, and ordinary appellate review, rather than from newly invented institutions. This is offered as a doctrinally grounded illustration of how the gap identified in Table 1 could be closed. It is not itself a claim

that this specific model has been tested in practice, a limitation the concluding section returns to.

Both directions align with the policy recommendations offered in the conclusion and confirm that the problem facing Article 17 of the TPKS Law is not whether offender rehabilitation is a sound idea. Both the academic literature and the international evidence reviewed here suggest that the idea is conceptually sound. The problem is how to translate that idea into a norm detailed enough to be carried out by officials who have the capacity to carry it out, within the bounds of the proportionality analysis above.

CONCLUSION

This study set out to answer three questions: how Article 17 of the TPKS Law and Articles 103 and 105 of the National Penal Code regulate offender rehabilitation (*das sollen*), how that regulation has actually operated (*das sein*), and what explains the resulting gap. On the first question, applying the four element doctrinal test set out above, Article 17 satisfies only one element in full, naming rehabilitation as a measure, and one element partly, naming a coordinating authority, while leaving triggering criteria and an enforcement consequence undefined. On the second question, no publicly traceable ruling has applied Article 17 to an adult offender, several implementing regulations mandated for completion within two years were issued more than a year late, national prison overcrowding stands at 86 to 89 percent, and the medical profession has declined to execute a related measure under an adjacent regime. On the third question, applying Soekanto's five factor test shows that the gap is explained by weakness in four of the five factors. The law itself is weak through the undefined criteria identified in the doctrinal test. Law enforcement officials are weak through delayed coordination and weak judicial socialization. Facilities are weak through overcrowding and the absent executor. Legal culture is weak through a preference for visible retribution over rehabilitation whose results are not immediately visible.

The minimum elements required to close this gap follow from the doctrinal test and proportionality analysis above, rather than from general policy preference. They are: implementing regulations that convert the undefined criteria in element (ii) into a rebuttable presumption triggered by defined conditions rather than an absolute rule; a specified coordination mechanism between the public prosecutor and the two ministries named in Article 17(3); and correctional capacity sufficient to deliver the rehabilitation programs the norm already promises. All three are bounded by the safeguard that no such reform may reduce or condition any victim-centered entitlement already secured elsewhere in the TPKS Law.

This study is limited to publicly available legal documents. Its findings regarding the absence of Article 17 rulings cannot substitute for a full review of the Supreme Court, Attorney General's Office, or Witness and Victim Protection Agency records, and future research with access to that data, or using an empirical approach through interviews with judges and prosecutors about their reasoning, would extend the doctrinal findings presented here.

To state the normative and empirical status of these conclusions separately: the finding that Article 17 satisfies only one of the four doctrinal elements in full, the classification of the gap using Soekanto's five-factor framework, and the proportionality analysis of the proposed rebuttable presumption model are

doctrinal conclusions. They are derived from applying stated legal tests to published texts and do not require field validation to stand as legal analysis. By contrast, three practical claims remain plausible inferences rather than observed facts: that overcrowding constrains rehabilitation programming in practice, that judicial socialization affects how consistently measures are imposed, and that the proposed rebuttable presumption model would function as intended if adopted. Each is supported by secondary sources and by the Uruguayan comparator, but each would require empirical validation, through court record review, official caseload data, or interviews with prosecutors, judges, and correctional staff, before it could be asserted as a finding about actual institutional behavior rather than a reasoned expectation.

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