

# Legal Analysis of Challenges and Obstacles to Implementing Policies for Preventing and Handling Sexual Violence in Higher Education

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## Abstract

Universities must provide an environment that is safe, inclusive, and free from all forms of violence. Unfortunately, reality shows that sexual violence also occurs in the tertiary environment. Therefore, the problem is the factors that influence the effectiveness of the Policy for Preventing and Handling Sexual Violence in Higher Education and legal approaches and strategies in overcoming obstacles to implementing the Policy for Preventing and Handling Sexual Violence (PPKS) in the tertiary environment. The aim of this research is to explore and analyze the challenges and obstacles that arise in the PPKS Policy in the higher education environment. The research method used is normative legal research, which will be supported by empirical data. This research uses literature study and document analysis. The research results found that factors influencing the effectiveness of the PPKS Policy in Higher Education include: clear policies and regulations and the application of appropriate and effective sanctions. Then the legal approach and strategy in overcoming obstacles to implementing the PPKS Policy in the Higher Education Environment using a criminal law approach and an administrative law approach. Strategies that can be implemented include reviewing and mapping situations that have the potential for violent acts, identifying factors that trigger sexual violence in the tertiary environment; increasing community awareness and involvement regarding sexual violence; as well as improving the implementation of PPKS policies through training and human resource development, as well as improving the quality of services for victims of sexual violence.

**Keywords:** Obstacle, University Policies, Ppks, Challenge

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## Introduction

Sexual violence is a very serious and detrimental form of human rights violation. Its existence threatens the physical, mental and emotional well-being of the individuals who are victims. This violence continues to increase significantly. One by one, the voices of victims of sexual violence at a number of universities echoed in society. These cases often result in reports to the police and criticism from netizens who demand firmness from educational institutions not to discriminate against the perpetrators. (Riani, 2020)

A culture of silence is a culture that forces women to be silent and positions themselves as weak, passive and submissive creatures (Meza-De-Luna et al., 2015). The cause of the high number of cases of sexual violence is the absence or minimal reporting of incidents, mainly due to the reluctance of victims to report (Williams, 2001). It seems that society is not ignoring it, but public stigma does not provide a comfortable space for victims to speak, plus law

enforcement is still weak, while victims need serious efforts to handle the cases they are experiencing.

It is important to note that anti-sexual violence policies are essentially a form of our siding with humanity in civilization. For universities, this policy is a barometer of university life that is healthy, independent, and brave in defending the truth in order to form civilized future leaders (Christianto, 2021). Upholding justice for victims of sexual violence, as well as providing strict sanctions for perpetrators, is the hope of all of us. If sexual violence is still considered trivial, ignored without prevention and resistance, then what will happen to human civilization, how can justice be upheld if victims of sexual violence crimes end up being blamed and ignored (Virgistasari & Irawan, 2022).

Universities, as centers of education and places of character formation, must provide an environment that is safe, inclusive, and free from all forms of violence. Unfortunately, reality shows that sexual violence also occurs in the tertiary environment.

Even though Permendikbud Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education has been ratified, not all universities have implemented it. Some universities may not yet realize the importance of implementing this policy. Several cases of sexual harassment and violence often occur in educational environments, which should be a safe place to receive knowledge has actually become a place that is prone to sexual harassment and violence. Komnas Perempuan recorded that from 2012-2020 there were 45,069 cases of sexual violence that occurred in educational environments. Based on education level, the most cases of sexual violence are in universities. Such as cases of sexual harassment or violence that have occurred recently at several universities in East Java, including at Jember State University, Surabaya State University, UIN Malang, and IAIN Kediri.

Whoever we are, no one agrees with sexual violence. In order to encourage the development of an academic culture, higher education administrators and the entire academic community are obliged to pay attention to and act in accordance with applicable standards of behavior (normative-ethical) which must be developed in the context of implementing the management of the Tridharma of Higher Education (good university governance). These guidelines were created so that all academic members carry out the principles of morals, decency, honesty, truth and knowledge as well as discipline in carrying out their duties, authority and obligations.

The Regulation of the Minister of Education and Culture concerning the Prevention and Handling of Sexual Violence in Higher Education Environments, is the basis for guidelines for universities to develop policies and take action to prevent and handle sexual violence related to the implementation of the Tridharma on or off campus, and to foster campus life humane, dignified, equal, inclusive, collaborative, non-violent among students, educators, education staff, campus residents in higher education (Regulation of the Minister of Education, Culture, Research and Technology of the Republic of Indonesia Number 30 of 2021 concerning the Prevention and Handling of Sexual Violence in Higher Education Environment, 2021). The implementation of Ministerial Regulations must be in line with efforts to humanize humans in terms of sexuality, and be fully oriented towards victims.

Higher education must be advanced, dignified and authoritative. Supported by academics who uphold moral values, free from sexual violence, for the sake of realizing quality, humanist education for Indonesia to rise to be stronger and more powerful among other countries.

Minister of Education and Culture Regulation Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education has been ratified and provides new hope for the community to receive proper protection. However, not all universities have implemented

it. Therefore, this research can help understand the extent of implementation of this policy and what the obstacles are, can provide recommendations about what universities in Indonesia need to do to implement this policy, and can help institutions understand that protecting victims and preventing sexual violence is an important step to maintain their reputation.

Based on the series of background explanations above, the interesting problems to research are: (1) What are the factors that influence the effectiveness of sexual violence prevention policies in higher education? (2) What is the legal approach and strategy for overcoming obstacles to implementing sexual violence prevention policies in higher education environments?

The aim of this research is to explore and analyze the challenges and obstacles that may arise in the effectiveness of sexual violence prevention policies in higher education environments. This research will also integrate legal analysis and potential solutions that can be proposed to overcome these obstacles.

## **Methods**

The type of research used is normative legal research, which will be supported by empirical data. This research uses literature study and document analysis including: 1) identifying and collecting literature related to sexual violence prevention policies, laws and social factors in higher education; 2) analyze relevant laws and regulations and policy documents from universities regarding the prevention of sexual violence.

The author collected data and legal materials by conducting interviews with university staff and students to gain views on policy implementation and the obstacles faced, as well as perceptions of sexual violence in universities.

Analysis of legal materials was carried out by: 1) analyzing the legal framework that applies to the prevention of sexual violence in higher education; 2) assess the effectiveness of regulations and rules in preventing sexual violence and providing protection for victims; 3) identify gender stereotypes and perceptions that can worsen the situation of sexual violence in higher education. The data and legal materials are analyzed systematically using qualitative descriptive methods, which means that researchers collect and select the data being analyzed and then systematically organize the results into concrete and prescriptive information in the form of: 1) formulating policy recommendations based on the findings of legal analysis; 2) create a framework of recommendations that can help universities improve the implementation of sexual violence prevention policies.

## **Results and Discussion**

### **Factors influencing the effectiveness of sexual violence prevention policies in higher education**

Based on data from the National Commission on Violence Against Women, most cases of sexual violence in educational environments occur in universities. Higher education ranks first for sexual violence in the educational environment with 35 cases from 2015 to 2021. (Anugrah Andriansyah, 2022) Sexual violence in higher education cannot be separated from abuse of the power structure and does not rule out the possibility of it being carried out by all layers of the structure in higher education high (Adiyanto, W., 2020). The academic community has an important role in efforts to prevent sexual violence in higher education. There are four levels of academic community involved in this effort, namely the university as a community, lecturers as a community, students as a community, and employees/staff and educational staff as a community. (Inge Nurtjahyo et al., 2020) However, each community has its own challenges and potential that can encourage sexual violence. This happens because there is still limited

knowledge and access to reporting sexual violence, which is still considered trivial by some educational institutions.

Not all universities in Indonesia have implemented Permendikbud Number 30 of 2021 concerning Prevention and Handling of Sexual Violence in Higher Education (Permen PPKS) or known as Permendikbud 30, some universities have not realized the importance of implementing this policy, because there are several obstacles in implementing Permendikbud 30, such as understanding and awareness about the importance of preventing and handling sexual violence in higher education which is not yet optimal, support and resources from higher education institutions which are not yet comprehensive and the formation of the Task Force for Preventing and Handling Sexual Violence (PPKS Task Force) in higher education has not yet carried out its function.

Permendikbud 30 was created to fill the void in the legal basis that protects cases of sexual violence in the tertiary environment, because Indonesia does not yet have legal regulations that can handle the problem of sexual violence in the tertiary sphere (Aqshal Raihan Budiputra, 2021). Factors that influence the effectiveness of the Sexual Violence Prevention Policy in Higher Education, namely:

### **Clear Policies and Regulations**

The legal framework that applies to the prevention of sexual violence in higher education, apart from those specifically regulated in Minister of Education and Culture Regulation 30, including regulating the management of handling cases of sexual violence and the establishment of a task force for handling sexual violence, is also regulated in the following regulations: (1) The Criminal Code (KUHP), the Criminal Code does not explicitly regulate sexual violence, but the Criminal Code can be applied to criminal acts related to sexual-based violence by referring to several provisions regarding crimes that have been regulated therein, such as: Article 335 , Article 315, Article 281 Paragraph 2, Article 289, Article 368, and Article 369; (2) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, as regulated in Article 30 paragraph (3) in conjunction with Article 46 paragraph (3), Article 31 paragraph (2) in conjunction Article 47, Article 32 in conjunction with Article 48. Article 35 in conjunction with Article 51 paragraph (1), Article 27 paragraph (4) in conjunction with Article 45 paragraph (4), Article 29 in conjunction with Article 45B, Article 27 paragraph (1); (3) Law Number 44 of 2008 concerning Pornography, this Law regulates the definition of pornography as images, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, body movements, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation which violates the norms of decency in society. As regulated in Article 4, Article 8, Article 11 and Article 12; (4) Law Number 20 of 2003 concerning the National Education System, (Indonesia, 2003) This law regulates the basis, functions and objectives of the national education system; principles of educational administration; rights and obligations of citizens, parents, society and government; learners; pathway, level and type of education; language of instruction; and compulsory education. However, Law Number 20 of 2003 does not specifically discuss preventing sexual violence in higher education environments; (5) Law Number 23 of 2004 concerning the Elimination of Domestic Violence regulates the rights of victims to obtain protection, the burden on the government and society to stop acts of domestic violence and provide the protection and assistance needed for recovery. (Rena Yulia N, 2004 ) This law also regulates criminal penalties for acts of domestic violence; (6) Regulation of the Minister of Education, Culture, Research and Technology Number 30 of 2021 concerning Prevention and Handling

of Sexual Violence in Higher Education Environments, Chapter II regulates the prevention of sexual violence. This prevention is carried out in stages in each section, at the policy level that supports the Prevention and Handling of Sexual Violence in Higher Education. Apart from that, there is strengthening in the management of handling when cases of sexual violence occur in the tertiary institution environment. (Putratama, et al., 2023).

Clear policies and regulations in preventing and handling sexual violence in higher education are important to increase the effectiveness of these policies. Universities are obliged to handle sexual violence through assistance, protection, imposition of administrative sanctions, and rehabilitation of victims. Clear and structured policies and regulations can help increase the effectiveness of sexual violence prevention policies in higher education. In addition, clear policies and regulations can help strengthen governance for handling cases of sexual violence in higher education, so that they can prevent cases of sexual violence and provide protection for victims of sexual violence (Education et al., 2022).

### **Application of Appropriate and Effective Sanctions**

Higher education institutions have their own autonomous rights as educational institutions in carrying out learning and teaching, research and community service. Universities also have the freedom to develop science and technology in order to create a golden generation. Therefore, universities can freely develop an academic culture that is useful as a wise scientific group and has the ability to organize interactions and relationships in the international arena in order to elevate the dignity and honor of the nation. (Law Number 12 of 2012 concerning Higher Education, 2012).

The function of universities is to help and develop areas that have great opportunities for prosperous natural resources and human resources. Apart from that, universities are expected to be able to help overcome problems that are currently occurring in society. Like the problem that is currently happening, namely cases of sexual violence. Cases of sexual violence that occur in universities are a very worrying paradox. Universities have a big responsibility to implement and transform knowledge to students. Apart from that, educational institutions also have a mandate to create a healthy, safe and inclusive educational environment, as well as providing educators and employees who are exemplary, professional, responsible and innovative in order to produce students who are qualified, ethical and have good morals. (Lies Sulistiani, 2022).

In general, cases of sexual violence in universities do not receive an adequate response or reaction. In cases of sexual violence, the reporter often withdraws his report due to pressure to protect the good name of the campus or intimidation carried out by the perpetrator or fellow perpetrators. This is done in order to prevent perpetrators from being given sanctions by the campus. The absence of adequate rules or policies causes victims to be reluctant to report, while perpetrators feel safe because there is no clear threat of sanctions for their actions. The threat of firm and clear sanctions is very important in preventing sexual violence in higher education. The threat of firm and clear sanctions serves to provide a deterrent impact for perpetrators and a deterrent impact for other parties. (Elmy Tasya Khairally - detikNews, 2023).

Universities need to create permanent policies or procedures to handle cases of sexual violence. The policy must include procedures for handling, recovering victims, and sanctions for perpetrators. Apart from that, universities must provide units or institutions equipped with trained resources so that victims receive adequate treatment and do not experience treatment that could further harm them.

In an effort to encourage the formation of a good academic culture, higher education administrators and the entire academic community must pay attention to and act in accordance with applicable normative-ethical standards of behavior. These ethical behavior standards must be formulated by higher education administrators in an academic ethic (code of ethics) which contains guidelines for attitudes, behavior and actions that include duties, authority and responsibilities, as well as consequences (rewards and sanctions) for lecturers, students and educational staff. These guidelines were created so that all academics implement the principles of morals, decency, honesty, truth, knowledge and discipline in carrying out their duties, authority and obligations. The established academic ethics are not only related to the implementation of the Tridharma of Higher Education, but also include the regulation of social interactions between academics both when they are on campus and when interacting with the wider community within the scope of activities held by the campus.

To ensure that college campuses are safe from sexual violence in its various forms, a supportive academic culture is needed. One way to create this culture is to establish a code of ethics or campus regulations which contain prohibitions and threats of sanctions against various forms of sexual violence in higher education. This code of ethics applies to lecturers, students and educational staff. Apart from that, higher education providers must also provide supporting facilities, including units that function to carry out the functions of prevention, response, handling, prosecution, as well as recovery and protection of victims of sexual violence in higher education, in the framework of implementing the code of ethics.

Minister of Education and Culture, Research and Technology Nadiem Makarim stated that universities that do not implement the provisions in Permendikbud 30 can be subject to sanctions, ranging from financial sanctions to accreditation sanctions. This is done so that campuses in Indonesia are aware of the government's seriousness in dealing with sexual violence in higher education environments.

### **Legal Approaches and Strategies in Overcoming Barriers to Implementing Sexual Violence Prevention Policies in Higher Education Environments**

Cases of sexual violence always show the same pattern of violence, namely involving power relations between the perpetrator and the victim, such as seniority and position or between the student and the supervisor. The perpetrator took advantage of his position, influence or status as a senior student or supervisor to obtain sexual benefits from the victims' vulnerabilities as children, women and their condition of being separated from their families because they lived in boarding houses, boarding houses or dormitories. Meanwhile, the victims think that the perpetrators are the people who will provide protection.

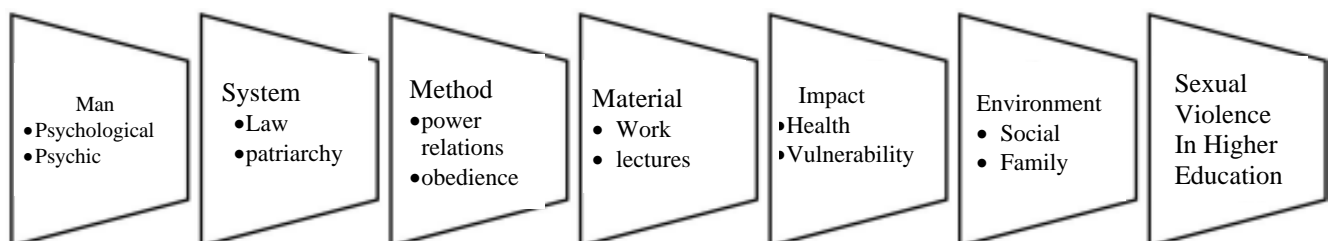


Figure 1. Conditions of the university environment as a cause of sexual violence

Universities can strengthen systems for handling sexual violence that side with victims and provide strict sanctions for perpetrators of sexual violence, universities can increase awareness of campus residents through education about sexual violence as a prevention effort and can

create a safe and inclusive educational environment for the entire academic community. and educational staff.

### **Legal Approach**

Legal products relating to sexual violence in Indonesia are still divided into several laws, such as the Criminal Code (KUHP), the Law on Child Protection, the Law on the Elimination of Domestic Violence, and the Law on Elimination of the Crime of Human Trafficking. However, this law has not been compiled in its entirety. Therefore, special laws are needed that regulate crimes of sexual violence starting from the process of prevention, handling and strict legal sanctions. Legal approaches that can be taken to overcome obstacles to implementing sexual violence prevention policies in higher education include:

The criminal law approach aims to provide criminal sanctions for perpetrators of sexual violence in the tertiary environment. It's just that the view that allows and considers it normal for sexual violence to occur in the tertiary environment is not far from the social construction that lives in society. Most victims are afraid to report it because incidents of sexual harassment usually occur in a quiet place, where there are only the perpetrator and the victim. Based on Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP), it is explained that evidence can be said to be valid if there is testimony from witnesses who saw the incident directly, testimony from experts, post-mortem letters from hospitals, instructions and statements from defendant. Apart from that, article 185 paragraph (2) of the Criminal Procedure Code explains that the testimony of one witness is not sufficient so more than one is needed. The absence or lack of witnesses makes it difficult or impossible for victims to prove cases of sexual violence. If the form of abuse that occurs is rape, a post-mortem can be carried out. However, if the harassment that occurs is touching or squeezing in certain parts, then it is difficult to carry out a post mortem, so it can be said that problems in the development of law enforcement include: the gap between normative law and sociological law between legal facts and existing legal rules (Hijriani et al ., 2023) .

The administrative law approach aims to provide administrative sanctions for perpetrators of sexual violence in the tertiary environment. Based on Article 14 of Minister of Education and Culture Regulation 30, it explains the types of administrative sanctions for perpetrators of sexual violence, including: light administrative sanctions, moderate administrative sanctions; and heavy administrative sanctions. (a) Light administrative sanctions as explained in Article 14 paragraph 2 include: (1) Written warning; (2) A written statement of apology published internally on campus or in the mass media; (b) Moderate administrative sanctions as described in Article 14 paragraph 3 include: (1) Temporary dismissal from office without obtaining office rights; (2) Reduction of rights as a student includes: (a) Postponement of attending lectures (suspension); (b) Revocation of scholarship; (c) Reduction of other rights. (c) Severe administrative sanctions as described in Article 14 paragraph 4 include: (1) Permanent dismissal as a student; (2) Permanent dismissal from position as an Educator, Education Personnel, or Campus Resident in accordance with the provisions of the laws and regulations of the relevant Higher Education Institution.

The sanctions regulated in article 14 must be carried out proportionally and provide justice to the victim. The type of sanctions that will be given to the perpetrators is recommended to the leadership by a task force (SATGAS) that has been specially formed within the university which is responsible for all activities starting from preventing and handling sexual violence to providing sanctions to the perpetrators. Apart from legal approaches, there are several strategies that can be used to overcome obstacles to implementing sexual violence prevention policies in higher education environments. Some of these strategies are: (a) Assess and map

situations that have the potential for violent acts to identify factors that trigger sexual violence in the tertiary environment. This can be done by conducting surveys or research on university students and staff to find out the extent to which sexual violence occurs in the university environment, the types of sexual violence that occur, and the factors that trigger sexual violence. (Nandar Luktiandi Putratama et al., 2022); (b) Increasing public awareness regarding sexual violence in the tertiary environment. Increasing awareness can be done through outreach campaigns, seminars and public discussions; (c) Increasing community involvement in preventing sexual violence in the tertiary environment. Increased involvement can be done through the formation of advocacy groups and participation in sexual violence prevention programs; (d) Increasing the implementation of sexual violence prevention policies in tertiary institutions, through training and human resource development, as well as improving the quality of services for victims of sexual violence. Based on Minister of Education and Culture Regulation 30, Article 6 explains the prevention strategies that must be carried out by universities. There are 3 aspects that must be carried out in preventive measures, including through learning, strengthening governance, and strengthening the culture of the student community, educators and education staff.

### Strategic Approach in Overcoming Barriers to Implementing Sexual Violence Prevention Policies in Higher Education Environments

The strategy model implemented is adapted to collaboration and involves the active participation of all campus members. Campuses can create an environment that is safe, supportive, and free from sexual violence. The following is a comprehensive campus-based sexual violence prevention strategy model that researchers have compiled:

Establishing Policies and Codes Of Ethics	<ul style="list-style-type: none"> <li>• Reate a zero-tolerance policy towards sexual violence</li> <li>• Establish a code of ethics for the entire academic community</li> </ul>
Training And Education	<ul style="list-style-type: none"> <li>• Training For Staff, Lecturers and Students on Preventing Sexual Violence</li> <li>• Educational Programs That Focus on Awareness, Consent, And Responsibility</li> </ul>
Reporting And Response System	<ul style="list-style-type: none"> <li>• Provides a safe and anonymous reporting channel</li> <li>• Form a crisis response team to respond to reports quickly and effectively</li> </ul>
Strengthening The Campus Legal System	<ul style="list-style-type: none"> <li>• Strengthening discipline and sanctions for perpetrators of sexual violence</li> <li>• Ensure a fair investigation and trial process</li> </ul>
Improved Lighting and Physical Security	<ul style="list-style-type: none"> <li>• Ensure the campus area is brightly lit and has a good security system</li> <li>• Placing surveillance cameras in strategic locations</li> </ul>
Student Empowerment	<ul style="list-style-type: none"> <li>• Encourage student participation in prevention initiatives</li> <li>• Providing resources and support for victims</li> </ul>
Cooperation And Partners	<ul style="list-style-type: none"> <li>• Collaborating with non-profit organizations and government agencies that focus on prevention</li> <li>• Organize joint campaigns to increase awareness in the community</li> </ul>
Continuous Evaluation and Updates	<ul style="list-style-type: none"> <li>• Carry out regular evaluations of the success of prevention strategies</li> <li>• Hold meetings or surveys to get feedback from students</li> </ul>

Figure 2. Comprehensive campus-based sexual violence prevention strategy model

Based on this description, a comprehensive campus-based sexual violence prevention strategy model can be explained, namely: (a) Establishing policies and codes of ethics is a critical step in campus-based sexual violence prevention strategies. This policy and code of ethics provides a clear legal and normative basis for the standards of behavior expected of all academics. Colleges should adopt a zero-tolerance policy towards sexual violence. This must be clearly explained in campus policies and regulations. Policies should be developed through hearing and sharing with all stakeholders, including students, faculty, staff, and administration, to help ensure fair representation and recognition of diverse perspectives. Universities must be consistent in providing a clear and comprehensive definition of sexual violence, including recognized forms such as sexual harassment, rape and sexual pressure. Universities also need to establish a code of ethics that covers acceptable and unacceptable behavior related to relationships between campus members, including all forms of social and academic interactions, and impose strict sanctions on perpetrators, indicating that sexual violence will not be tolerated; (b) Implementation of training and education to ensure that all academics understand what sexual violence is, how to recognize the signs, and how to engage positively in preventing it; (c) An easily accessible reporting system and quick response can encourage victims to report incidents and feel supported and protected; (d) Strengthening the campus legal system is a critical step in campus-based sexual violence prevention strategies. The college legal system includes the internal legal rules and procedures used by the institution to respond to violations and protect members of the campus community. There is also a need for collaboration with external legal authorities, such as the police and prosecutor's office or other related institutions to ensure that sexual violence cases are handled comprehensively and efficiently; (e) Improved lighting and physical security are important strategies in preventing campus-based sexual violence. Factors such as good lighting and well-managed security can create a safer environment, reduce opportunities for sexual violence, and provide a sense of protection for campus members; (f) Student empowerment is an important aspect in encouraging active participation and empowering students to create a culture that supports and educates awareness, responsibility and respectability among students. Students who feel heard and supported will be more likely to engage in prevention initiatives and report incidents they witness or experience; (g) Collaboration with external partners can involve non-profit organizations, government agencies, law enforcement agencies, and community groups who are committed to supporting and strengthening efforts to prevent sexual violence in higher education environments. Because sexual violence is not just a campus problem, involving the broader community will increase the effectiveness of prevention efforts; (h) Continuous evaluation and updates help universities to understand the successes and challenges they face, so they can continually update their prevention strategies. This process allows educational institutions to ensure the sustainability and effectiveness of prevention efforts, as well as adapt their approaches to changes in campus dynamics and community developments.

## **Conclusion**

Based on the description of the results and discussion of the problem formulation above, the following can be concluded: (1) The effectiveness of the Policy for Preventing and Handling Sexual Violence in Higher Education is influenced by not all universities in Indonesia implementing Permendikbud 30, some universities have not realized the importance of implementing this policy, because there are several obstacles in implementing Permendikbud 30, such as understanding and awareness of the importance of prevention and handling of sexual violence in higher education is not yet optimal. A strategic approach to overcoming obstacles to implementing sexual violence prevention policies in higher education

environments can be implemented using a comprehensive campus-based sexual violence prevention strategy model.

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