

# The Regulation on Sexual Harassment in ASEAN Workers: Evidence from Several Countries



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## ABSTRACT

Despite the existence of numerous laws and regulations that govern policy arrangements for the management of sexual harassment cases, victims still lack access to justice. This research examines the rules governing the management of sexual harassment cases in the workplace, with a particular emphasis on ASEAN member countries. This research employs normative juridical methods, which include statutory, conceptual, and comparative approaches. The research results show that, despite the existence of the 1955 Employment Law and Criminal Code in Malaysia, the incidence of sexual harassment continues to rise. To address this issue, it is critical to involve all employees in the development, execution, and oversight of workplace policies. Second, Singapore's primary law for dealing with sexual harassment, the Protection from Harassment Act, is accompanied by an employment law. Nevertheless, there are apprehensions regarding the inadequate remedies, uncertainty, and statutory protections against harassment, particularly in the workplace. Third, Indonesia has implemented numerous laws and regulations to manage sexual harassment cases. However, the government still faces challenges, such as an incomplete and insufficient legal framework, which results in victims being denied justice. Fourth, the effective implementation and protection of women's rights necessitate a comprehensive approach that considers cultural sensitivities, regional dynamics, and international norms to reconstruct sexual harassment regulations in ASEAN countries. As a result, it is critical to establish an anti-sexual harassment organizational culture and restructure sexual harassment regulations to protect victims' rights.



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## 1. Introduction

The issue of violence against women has recently gained significant attention. Article 1 of the Declaration on the Elimination of Violence Against Women defines the term; this term encompasses all forms of gender-based violence that cause women to suffer, including sexual, emotional, and physical acts. Sexual intercourse is one form of violence against women.<sup>1</sup> Regardless of whether intimate relations

<sup>1</sup> Mohd Tariq Jamal and others, 'Work during COVID-19: Assessing the Influence of Job Demands and Resources on Practical and Psychological Outcomes for Employees', *Asia-Pacific Journal of Business Administration*, 13.3 (2021), 293–319 <https://doi.org/10.1108/APJBA-05-2020-0149>

are involved or the status of the perpetrator and victim, sexual violence encompasses any form of mistreatment of women that is sexual. Sexual violence is not exclusively associated with rape or sexual intercourse; instead, it includes all forms of acts that are not based on mutual consent. Furthermore, it extends beyond the penetration of women by men; it also consists of the intentional use of tools or objects to achieve a desired outcome of the victim's distress.<sup>2</sup>

The deliberate act of sexual harassment aims to intimidate, degrade, humiliate, or sexually harass the victim.<sup>3</sup> In Article 2 of the Universal Declaration of Human Rights, there are a variety of forms of harassment directed at women, such as physical, sexual, and psychological violence, as well as those associated with dowry, rape during marriage, harm to the genitals, and sexual extortion. Rape, sexual harassment in educational institutions, human trafficking, and forced prostitution are among the physical, sexual, and psychological forms of violence that frequently affect women.

On average, women are the victims of sexual harassment cases in the workplace, which is a problematic issue for workers. In 2021, according to data from the National Commission for Women, there were 389 instances of sexual violence in the workplace, with 411 victims. In 2022, there will be 324 cases and 384 victims. As of May 2023, there were 123 cases of sexual violence in the workplace, with 135 victims. In the meantime, the International Labour Organisation has conducted a survey that predicts that violence and harassment will affect 70.93 percent of the 1,173 respondents in the workplace in 2022. They admitted to experiencing harassment and violence in their workplace. According to this survey, as many as 69.35 percent of victims experienced more than one form of violence or harassment. Furthermore, the psychological nature of the violence and harassment that victims encountered was the most prevalent, accounting for 77.40 percent of the cases. Sexual harassment was the second most prevalent, accounting for 50.48 percent of the cases. Women continue to constitute the majority of workplace violence victims, with a total of 656 individuals affected.<sup>4</sup>

Sexual harassment continues to be a prevalent hazard in the workplace, resulting in substantial psychological, physical, and financial expenses for both

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<sup>2</sup> Michelle Russen and others, 'Coworker Support in a Sexual Harassment Climate: A Conservation of Resources Perspective', *International Journal of Hospitality Management*, 119 (2024), 103710 <https://doi.org/10.1016/j.ijhm.2024.103710>

<sup>3</sup> Siti Nurbayani, Moh. Dede, and Millary Agung Widiawaty, 'Utilizing Library Repository for Sexual Harassment Study in Indonesia: A Systematic Literature Review', *Heliyon*, 8.8 (2022), e10194 <https://doi.org/10.1016/j.heliyon.2022.e10194>

<sup>4</sup> Aristides A. Vara-Horna and others, 'Direct and Indirect Effects of Workplace Sexual Harassment on the Productivity of Victims and Witnesses: The Preventive Role of Equitable Management', *Heliyon*, 9.11 (2023), e21096 <https://doi.org/10.1016/j.heliyon.2023.e21096>

individuals and institutions.<sup>5</sup> First, sexual harassment initially causes severe mental health issues in employees, which may ultimately lead to substance abuse. *Secondly*, sexual harassment at the institutional level contributes to the establishment of formal and informal status hierarchies and social exclusion. This threatens the institution's stability, as excluded employees may perceive themselves compelled to depart the organization. For instance, victims may experience work tension and decreased job contentment as a result of sexual harassment, regardless of its form or intensity.<sup>6</sup> Whistleblowers frequently face retaliation, including ignoring, discrediting, and even demoting, which is the primary reason victims fail to pursue formal action. An additional factor is the agency's negative perceptions and lack of confidentiality. The absence of institutional democratization, which relies on three crucial pillars: employee voice, representation, and participation in the employee decision-making process, presents another issue.<sup>7</sup>

The majority of sexual harassment cases remain unreported due to the victim's disadvantaged position and the perpetrator's family, connections, educational background, threats, and socio-economic factors.<sup>8</sup> The legal procedure for sexual harassment cases is characterized by numerous obstacles, mainly when the perpetrator is a minor and the victim is an adult.<sup>9</sup> For various reasons, including a lack of evidence, economic constraints, and humiliation, victims only report most cases to non-governmental organizations or local government institutions. The shift from a relationship of consent between both parties to a criminalization process without a detailed explanation should not lead to a biased perception of sexual harassment.<sup>10</sup>

Internationally, people widely condemn sexual harassment in the workplace as a violation of human rights and a form of sex discrimination. In reality, it is illegal in over 75 countries. Sexual harassment in the workplace exacerbates absenteeism and attrition, leading to a decrease in job satisfaction and productivity. Despite its

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<sup>5</sup> Christina Athanasiades and others, 'University Students' Experiences of Sexual Harassment: The Role of Gender and Psychological Resilience', *Frontiers in Psychology*, 14 (2023) <https://doi.org/10.3389/fpsyg.2023.1202241>

<sup>6</sup> Yassin Denis Bouzzine and others, 'What Can Nudging Offer to Reduce Workplace Sexual Harassment? A Conceptual Review', *World Development Sustainability*, 4 (2024), 100149 <https://doi.org/10.1016/j.wds.2024.100149>

<sup>7</sup> Frank Dobbin and Alexandra Kalev, 'The Promise and Peril of Sexual Harassment Programs', *Proceedings of the National Academy of Sciences*, 116.25 (2019), 12255–60 <https://doi.org/10.1073/pnas.1818477116>

<sup>8</sup> Leila Wood and others, 'Sexual Harassment at Institutions of Higher Education: Prevalence, Risk, and Extent', *Journal of Interpersonal Violence*, 36.9–10 (2021), 4520–44 <https://doi.org/10.1177/0886260518791228>

<sup>9</sup> Stephen J. Aguilar and Clare Baek, 'Sexual Harassment in Academe Is Underreported, Especially by Students in the Life and Physical Sciences', ed. by Andrew R. Dalby, *PLOS ONE*, 15.3 (2020), e0230312 <https://doi.org/10.1371/journal.pone.0230312>

<sup>10</sup> Nurbayani, Dede, and Widiawaty.

continued prevalence and lack of reporting, legislative measures or incentives have not eradicated the disease. Comprehensive training initiatives, robust organizational protocols regarding sexual harassment, and complaint systems that protect employees from retaliation appear to have the most significant potential for reducing sexual harassment cases.

Various legal principles, depending on the jurisdiction, may govern sexual harassment. These principles may encompass employment law protections against unfair dismissal, human rights laws mandating a safe working environment, health and safety regulations requiring the provision of a safe workplace, criminal law (particularly about sexual violence), tort law (which pertains to intentional acts for which a court may award damages), contract law (including breach of contract), and employment law (including protection against unfair dismissal). Court decisions concerning sexual harassment significantly impact the allocation of damages and the establishment of legal standards. The effectiveness of these laws hinges on the volume of sexual harassment reports that victims and those affected by the harassment submit. However, in practice, reports of sexual harassment incidents are rare.

While the presence of sexual harassment will reduce productivity to an optimally lower level, the absence of effective implementation of government laws and organizational policies can elevate sexual harassment to a higher level. The existing literature posits that sexual harassment in the workplace is a consequence of the complexity of legal systems and regulatory mechanisms, the decline of society as a whole, and the poor implementation of laws and policies by government organizations. Organizational policies and procedures frequently contain ambiguity due to government laws' inadequacy and ineffectiveness, which persist if not rectified. Furthermore, because the government and organizations' laws and policies are not in agreement, there are no efforts to prevent sexual harassment in the workplace. Most of the policy suggestions and academic notes involve explicit intervention and implementation, followed by adequate and effective laws and policies. Many others recommend the importance of effective laws and policies at various levels to prevent sexual harassment.<sup>11</sup>

Sexual violence in the workplace is a prevalent issue worldwide, including in ASEAN countries. The fear of job loss and discrimination are common reasons why women frequently experience sexual harassment in the workplace, which often prevents the reporting of such incidents.<sup>12</sup> Furthermore, to safeguard women and sexual minorities from online gender-based violence, which can also extend to the

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<sup>11</sup> Aliu Mohammed, Edward Wilson Ansah, and Daniel Apaak, 'Sexual Harassment as Experienced by Nurses from Selected Healthcare Facilities in Ghana', *BMC Nursing*, 22.1 (2023), 117 <https://doi.org/10.1186/s12912-023-01228-6>

<sup>12</sup> Francesco Chirico and others, 'Psychosocial Risk Prevention in a Global Occupational Health Perspective. A Descriptive Analysis', *International Journal of Environmental Research and Public Health*, 16.14 (2019), 2470 <https://doi.org/10.3390/ijerph16142470>

workplace, governments must underscore the significance of more stringent regulations and an inclusive technology sector.<sup>13</sup> A significant issue in Indonesia is the legal framework's regulation of sexual violence, particularly in the workplace. This nation has implemented legislation, including Law Number 12 of 2022, which concentrates on the criminal offense of sexual violence. Furthermore, the government has implemented regulations to address criminal sexual violence, which encompasses workplace sexual violence. The Draft Law on the Elimination of Sexual Violence was necessary to establish gender-friendly and safe environments for female workers, as well as to emphasize the necessity of comprehensive regulations to address on-site cases of sexual violence due to the intricacy of the power dynamics that impact women in the tourism sector Employment. The goal of this legal protection is to prevent, protect, and empower victims, as well as to raise public awareness to eradicate sexual violence in a variety of settings, including Indonesian workplaces.<sup>14</sup>

According to research conducted in Malaysia in 2019, 60% of individuals from a variety of professions had encountered or been victims of sexual harassment in the Workplace. However, in 2020, the prevalence of sexual harassment in Malaysia will be extremely high, with data indicating that 36% of Malaysian women have experienced sexual harassment. This issue is not exclusive to women; male victims have also reported experiencing sexual harassment in their employment. The number of cases is still increasing despite provisions in the Criminal Code, the 1955 Employment Law, and the Code of Practice for the Prevention and Eradication of Sexual Harassment in the Workplace. The Malaysian Government initially introduced a bill in Parliament in December 2021 ("Anti-Sexual Harassment Bill tabled in Parliament"), which was overwhelmingly passed by the Dewan Rakyat in July 2022 ("Malaysia passed the Anti-Sexual Harassment Bill with overwhelmingly minor amendments, despite widespread criticism") and enacted into law in October 2022.

The bill grants victims of sexual harassment the right to redress, establishes an Anti-Sexual Harassment Court, and aims to raise awareness and prevent sexual harassment. The Malaysian Sexual Violence Act (Act 574) and the Domestic Violence Act 1994 (Act 521) are two Malaysian laws that provide a structured framework for the prevention and management of sexual violence. This includes explicit provisions regarding victim classification, criminal sanctions, and imprisonment patterns, thereby increasing legal certainty and protection for

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<sup>13</sup> Eka Rismawati, Abdul Kadir Jaelani, and Karakitapoglu Aygün, 'The Regulation of Foreign Workers as Technology and Knowledge Transfer', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 1.2 (2023), 64–74 <https://doi.org/10.53955/jsderi.v1i2.8>

<sup>14</sup> Aprilina Matilda Liko and others, 'Sexual Violence in Indonesian Law Number 12 Of 2022: Viewed from the Concept of Radical Feminism', *International Journal of Social Science and Human Research*, 06.02 (2023) <https://doi.org/10.47191/ijsshr/v6-i2-65>

victims.<sup>15</sup> However, Indonesia faces challenges because it lacks a comprehensive law explicitly addressing sexual violence, leading to gaps in victim protection and uncertainty. Compared to the current legal situation in Indonesia, Malaysian law offers a more comprehensive system for addressing cases of sexual violence, which has the potential to provide victims with higher levels of support and justice. Indonesia can improve its approach to combating sexual violence and guarantee the rights and safety of victims by implementing regulations that are as explicit as those in Malaysia.<sup>16</sup>

In Singapore, the current regulations are inadequate in addressing the underlying causes of sexual violence as a result of a variety of factors. The absence of systematic data collection on violence against women in Singapore hinders the accurate evaluation of the effectiveness of existing schemes to combat this problem.<sup>17</sup> The international anti-trafficking movement influences Singapore's sex worker regulations, which prioritize image control through police raids in red light districts over addressing the root causes of sexual violence, such as destigmatizing sex workers and enhancing their fundamental rights. This also applies to migrant laborers. This method disregards the intricate socio-legal factors that contribute to sexual violence and prioritizes surface-level interventions over comprehensive solutions that effectively address the underlying issues.<sup>18</sup>

Nevertheless, Singapore's regulations offer distinct advantages over Indonesia in terms of the legal framework and political transparency, which are particularly relevant in confronting the causes of sexual violence.<sup>19</sup> People regard Singapore's political system as superior because of its transparent regulations regarding the source and utilization of political party funds, which can aid in preventing corruption. In contrast, Indonesia faces challenges due to a lack of specific laws addressing sexual violence and a rise in the number of cases.<sup>20</sup> Currently, researchers are evaluating the effectiveness of Indonesia's regulations in preventing

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<sup>15</sup> Rizky Amalia, Hafrida Hafrida, and Elizabeth Siregar, 'Perbandingan Pengaturan Tindak Pidana Kekerasan Dalam Rumah Tangga Dalam Hukum Pidana Indonesia Dan Hukum Pidana Malaysia', *PAMPAS: Journal of Criminal Law*, 2.2 (2021), 1–14 <https://doi.org/10.22437/pampas.v2i2.13334>

<sup>16</sup> Dorothea Chee Ke Jing and others, 'Regulation Matters: A Comparison Of Malaysian-Indonesian's E-Hailing Regulation Framework', *Asia Proceedings of Social Sciences*, 6.3 (2020), 188–91 <https://doi.org/10.31580/apss.v6i3.1324>

<sup>17</sup> Devyani Pande and Araz Taeihagh, 'Navigating the Governance Challenges of Disruptive Technologies: Insights from Regulation of Autonomous Systems in Singapore', *Journal of Economic Policy Reform*, 26.3 (2023), 298–319 <https://doi.org/10.1080/17487870.2023.2197599>

<sup>18</sup> Siao Yuong Fong, 'Imagining Film Censorship in Singapore: The Case of Sex.Violence.FamilyValues', *Asian Cinema*, 31.1 (2020), 77–98 [https://doi.org/10.1386/ac\\_00014\\_1](https://doi.org/10.1386/ac_00014_1)

<sup>19</sup> Ani Purwanti, Dyah Wijaningsih, and Muh. Afif Mahfud, 'Reflection on Indonesian Regulations Regarding the Prevention and Enforcement of Sexual Violence Online', in *Proceedings of the 1st International Workshop on Law, Economics and Governance, IWLEG 2022, 27 July 2022, Semarang, Indonesia* (EAI, 2023) <https://doi.org/10.4108/eai.27-7-2022.2326246>

<sup>20</sup> Esy Maestro and others, 'A Comparison Of Indonesian And Singapore's Political Systems', *European Journal of Education Studies*, 8.7 (2021) <https://doi.org/10.46827/ejes.v8i7.3815>

non-physical sexual violence, highlighting the need for a more robust legal framework and public awareness campaigns.<sup>21</sup> Indonesia can enhance its regulatory mechanisms to more effectively combat sexual violence by adopting policies similar to those of Singapore.<sup>22</sup>

According to previous research by Maj Britt D. Nielsen et al., sexual harassment is a multifaceted phenomenon with numerous factors. Healthcare workers are generally hesitant to deem inappropriate sexual advances from patients as harassment, mainly if the patient is oblivious to their actions and has dementia or cognitive impairment. Furthermore, the investigation disclosed that workplaces seldom implement explicit policies or guidelines regarding sexual harassment. Consequently, workplaces frequently implement ad hoc and personalized responses to sexual harassment. Consequently, these discoveries underscore the necessity of prioritizing the prevention and mitigation of sexual harassment within organizations.<sup>23</sup> Justice Mensa et al.'s research subsequently demonstrates that sexual harassment significantly and adversely affects psychological well-being. Resilience, in turn, mediated the relationship between psychological well-being and sexual harassment. However, contrary to expectations, the conflict resolution climate did not moderate the relationship between psychological well-being and sexual harassment.<sup>24</sup> The research conducted by Elizabeth M. Viglianti et al. demonstrates that the application of emergency management principles provides a framework for institutions to effectively balance their obligations to primary victims of sexual harassment with the recognition of the necessity to restore the well-being and culture of secondary victims.<sup>25</sup> In the meantime, this investigation focuses on the regulations that govern sexual harassment cases. These regulations require an extensive assessment to identify the most effective solutions for enhancing rules, particularly in workplace sexual harassment.

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<sup>21</sup> Dona Raisa Monica and others, 'Regulation Of Non-Physical Sexual Violence In Indonesia (Analysis Of Law Number 12 Of 2022 Concerning Sexual Violence)', *International Journal of Advanced Research*, 11.03 (2023), 1173–77 <https://doi.org/10.21474/IJAR01/16549>

<sup>22</sup> Cholida Hanum, 'The Urgency of Women Protection from Sexual Violence: An Analysis of The Current Regulations in Indonesia', in *Proceedings of the 1st International Conference on Gender, Culture and Society, ICGCS 2021, 30-31 August 2021, Padang, Indonesia* (EAI, 2022) <https://doi.org/10.4108/eai.30-8-2021.2316274>

<sup>23</sup> Maj Britt D. Nielsen and others, 'Sexual Harassment in Care Work – Dilemmas and Consequences: A Qualitative Investigation', *International Journal of Nursing Studies*, 70 (2017), 122–30 <https://doi.org/10.1016/j.ijnurstu.2017.02.018>

<sup>24</sup> Justice Mensah, Eric Nanteer-Oteng, and Richfield Atinyo, 'Impact of Exposure to Workplace Sexual Harassment on Wellbeing among Ghanaian Nurses: The Role of Resilience and Conflict Resolution Climate', *International Journal of Africa Nursing Sciences*, 20 (2024), 100694 <https://doi.org/10.1016/j.ijans.2024.100694>

<sup>25</sup> Elizabeth M. Viglianti and others, 'Responding to the Ripple Effects of Sexual Harassment: An Emergency Management Framework', *Trends in Molecular Medicine*, 2024 <https://doi.org/10.1016/j.molmed.2024.04.007>

Collaboration across policy, education, and technology is necessary to address the issue of sexual harassment, with technology having the potential to assist victims.<sup>26</sup> In specific workplaces, sexual harassment is often associated with violence or other forms of harassment before management takes it seriously. Nevertheless, some individuals do not regard sexual harassment as a significant issue, and excessive attention to the incident can exacerbate negative emotions. Professional organizations must acknowledge harassment prevention as an explicit aspect of their organizational culture, which refers to the attitudes of managers and employees toward sexual harassment cases. In contrast, organizational measures refer to collective efforts to prevent or address sexual harassment at the managerial level. Therefore, it is crucial to study the existing regulations about sexual harassment cases and evaluate them to determine the most effective form of regulation. This can be achieved by conducting comparative analyses with other countries, particularly Malaysia and Singapore.

## 2. Research Method

This form of legal research employs a conceptual, statutory, and comparative approach to normative juridical research. This research uses a conceptual approach to develop legal concepts, principles, and ideas and to identify pertinent legal principles to the issues at hand.<sup>27</sup> The legislative approach entails examining and analyzing all relevant laws and regulations about legal matters. The comparative approach is a research method that involves comparing a subject to other countries to identify references and recommendations.<sup>28</sup> Next, prescriptive analysis will be used to assess the sources of legal materials. Prescriptive analysis is a method that integrates descriptive and predictive analysis to ascertain the appropriate course of action for a current issue or decision. This method examines the content and significance of the rule of law. This method is also bolstered by comparative analysis, which reveals valuable insights that can be applied more broadly.<sup>29</sup> This analysis aims to identify gaps and challenges in implementing existing regulations, activate their effectiveness, and recommend policy modifications or enhancements. This analysis will generate information and evidence that can bolster ASEAN's

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<sup>26</sup> Yuying Tan and others, 'A Scoping Review of Technological Tools for Supporting Victims of Online Sexual Harassment', *Aggression and Violent Behavior*, 78 (2024), 101953 <https://doi.org/10.1016/j.avb.2024.101953>

<sup>27</sup> Abdul Kadir Jaelani, Resti Dian Luthviati, and others, 'Indonesia Carbon Tax Policy: A Key Role in Sustainable Development Goals', 2024, p. 020040 <https://doi.org/10.1063/5.0202042>

<sup>28</sup> Reza Octavia Kusumaningtyas and others, 'Reduction of Digitalization Policy in Indonesian MSMEs and Implications for Sharia Economic Development', *JURIS (Jurnal Ilmiah Syariah)*, 21.2 (2022), 157 <https://doi.org/10.31958/juris.v21i2.6855>

<sup>29</sup> Sapriani Sapriani, Reza Octavia Kusumaningtyas, and Khalid Eltayeb Elfaki, 'Strengthening Blue Economy Policy to Achieve Sustainable Fisheries', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 2.1 (2024), 1–19 <https://doi.org/10.53955/jsderi.v2i1.23>



efforts to regulate sexual harassment regulations by comparing Malaysia, Singapore, and Indonesia as a result of policy recommendations.<sup>30</sup>

### 3. Results and Discussion

#### *The challenges in Enforcing Sexual Harassment Regulations in Malaysia*

In recent months, sexual harassment in the workplace has garnered significant attention and discourse. In the past year, there has been a heightened emphasis on the intricate issues associated with sexual harassment in the workplace by businesses and employers in Malaysia, even though the majority of employers have been relatively sluggish to respond.<sup>31</sup> Employers' momentum to implement anti-harassment policies and processes, learn to manage sexual harassment complaints, and ensure that employees attend external and internal education and training sessions has increased significantly. In November 2021, the government announced that the police had investigated and reported 775 cases of sexual harassment. However, it is evident that this is only the beginning, and it is probable that additional cases will emerge as awareness and education continue to rise.<sup>32</sup>

The Employment Law defines sexual harassment as "any unwanted act of a sexual nature, whether verbal, non-verbal, visual, gesture, or physical, directed at a person that offends, embarrass, or constitutes a threat to his or her well-being, arising out of and as long as he or she works." According to the most recent draft of the proposed Anti-Sexual Harassment Law, sexual harassment is "any unwanted sexual conduct, in any form, whether verbal, non-verbal, visual, gestural, or physical, directed at a reasonable person that offends, embarrasses, or constitutes a threat to his or her welfare."<sup>33</sup>

Even though the Anti-Sexual Harassment Law and the "Anti-Sexual Harassment Tribunal" will introduce new specific avenues for sexual harassment complaints, there is already a method for victimized workers to exit the workplace and for employers to take action. Sexual harassment is a workplace offense that can result in termination of employment. A victim who discloses sexual

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<sup>30</sup> Abdul Kadir Jaelani, Ahmad Dwi Nuryanto, and others, 'Legal Protection of Employee Wage Rights in Bankrupt Companies: Evidence from China', *Legality: Jurnal Ilmiah Hukum*, 31.2 (2023), 202–23 <https://doi.org/10.22219/ljih.v31i2.25874>

<sup>31</sup> Anom Wahyu Asmorojati and others, 'The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights', *BESTUUR*, 10.1 (2022), 43 <https://doi.org/10.20961/bestuur.v10i1.60179>

<sup>32</sup> Saslina Kamaruddin Et.al, 'Sexual Harrassment at Workplace: A Need for ASpecific Law in Malaysia', *Turkish Journal of Computer and Mathematics Education (TURCOMAT)*, 12.3 (2021), 454–61 <https://doi.org/10.17762/turcomat.v12i3.750>

<sup>33</sup> Muhammad Zahrul Anam and others, 'Digital Public Opinion and Moratorium Policy of Indonesia on Malaysia's Maid Online System to Recruit Indonesian Domestic Workers', *Asian Journal of Political Science*, 2024, 1–25 <https://doi.org/10.1080/02185377.2024.2351403>

information that suggests the employer failed to address the complaint adequately may be required to undergo constructive discharge.<sup>34</sup>

Of course, as previously mentioned, a significant number of workers have been silent victims of sexual harassment for years, and it has only been in recent years that there has been greater awareness and adequate education regarding sexual harassment in the workplace. The Industrial Relations Court has the opportunity to refine and clarify its approach to resolving sexual harassment cases in light of the rising number of complaints in recent years. Sexual harassment is a multifaceted issue with numerous forms. Evidence can also be contentious, as multiple instances of sexual assault happen in private, without witnesses.<sup>35</sup>

In sexual harassment complaints, it is common for the complainant to be unable to provide witnesses or corroborating evidence to support their claim. This is particularly true because numerous incidents occur in private or locations where the alleged perpetrator and the complainant/victim are alone. Many situations arise in Cagamas when one individual's words contradict those of another, leading to various accusations. The plaintiff's defense asserted that no other individuals witnessed the incident, which multiple complainants or victims had alleged. The Industrial Relations Court explicitly declared that the lack of witnesses did not constitute a valid defense, citing outdated law that cannot refute the complainant's sexual harassment allegations without corroborating evidence. Another common feature of sexual harassment cases is that the submission of complaints often occurs several months after the alleged incident. In certain high-profile cases of sexual harassment worldwide, it may take decades for the complainant to initiate legal proceedings.<sup>36</sup>

The Employment Act of 1955 imposes statutory obligations on all employers concerning handling sexual harassment complaints in the workplace. Legal accountability may apply to employers and agency leaders who fail to fulfill their obligations regarding sexual harassment complaints.<sup>37</sup> Leaders who violate this provision will be subject to disciplinary action. Section XVA of the Employment Act of 1955 legally requires employers to investigate sexual harassment complaints. When an investigation establishes sexual harassment, the employer must take disciplinary action against the employee who committed the violation. This action may encompass any form of discipline that the employer deems

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<sup>34</sup> Halim Ismail and others, 'Personality Traits and Workplace Bullying among Contract Trainee Doctors in Malaysia', *Heliyon*, 10.1 (2024), e23625 <https://doi.org/10.1016/j.heliyon.2023.e23625>

<sup>35</sup> Verus Lawrence, 'Policies Implementation to Address Harassment in Workplace', *Journal of Science, Technology and Innovation Policy*, 8.2 (2023), 12–18 <https://doi.org/10.11113/jostip.v8n2.118>

<sup>36</sup> Malvin Ping Chieng Tan and Sharon Sam Mee Kwan, 'Workplace Sexual Harassment Is an Occupational Hazard. Why Should We Tolerate It?', *Safety and Health at Work*, 13 (2022), S298 <https://doi.org/10.1016/j.shaw.2021.12.1683>

<sup>37</sup> Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *BESTUUR*, 10.1 (2022), 68 <https://doi.org/10.20961/bestuur.v10i1.59098>

appropriate, such as demotion, suspension, or dismissal without notice. Furthermore, failure to adhere to these regulations may result in a fine of up to RM10,000 for leaders.<sup>38</sup>

The Malaysian Employment Law prohibits sexual harassment in the workplace. The Act is a strong foundation for women's dignity and freedom from workplace harassment in Malaysia. Meanwhile, the Malaysian government is examining a new Sexual Harassment Bill to broaden the legal protections against sexual harassment and the remedies available to victims. The Employment (Amendment) Act 2022 ("Amendment Act") contains amendments to the sexual harassment provisions of the Employment Act 1955.<sup>39</sup> The only three modifications in the sexual harassment provisions are the deletion of Article 81G, which stipulates that Part XVA concerning sexual harassment applies to all employees, irrespective of their wages. Because of this, the 1955 Manpower Law will apply to all employees as of January 1, 2023. Consequently, the incorporation of Article 81H mandates employers to display notices to enhance workplace awareness conspicuously. Additionally, modifications to Article 81F will result in a fine of RM50,000, up from RM10,000, if the leadership neglects to investigate a sexual harassment complaint or inform the complainant of their refusal to inquire about the matter and the basis for their decision. This amendment law will come into effect on January 1, 2023<sup>40</sup>

Even though colleagues or managers commit the majority of sexual harassment in the workplace, clients, contractors, or other third parties can also harass women. Women are less inclined to report instances of sexual harassment. Research indicates that reporting sexual harassment frequently results in intimidation, particularly the victimization of the most vulnerable victims. The Violence and Harassment Convention specifically mandates "protection against victimization or intimidation of whistleblowers, victims, witnesses, and informers." Nevertheless, Malaysian law does not integrate the prohibition of sexual harassment in the workplace with protection from intimidation when an individual files a complaint.<sup>41</sup>

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<sup>38</sup> Andi Luhur Prianto, Aqmal Reza Amri, and Mohd Na'eim Ajis, 'Governance and Protection of Indonesian Migrant Workers in Malaysia', *Journal of Southeast Asian Human Rights*, 7.2 (2023), 214 <https://doi.org/10.19184/jseahr.v7i2.44185>

<sup>39</sup> Asianto Nugroho and others, 'Implementation of Worker Rights Protection for Government Employees with Employment Agreements', 2021 <https://doi.org/10.2991/assehr.k.211014.023>

<sup>40</sup> Abdul Majid and others, 'A New Chapter in the Law of Sexual Harassment in Malaysia: The Emergence of the Torts of Harassment and Sexual Harassment', *Common Law World Review*, 48.4 (2019), 191–207 <https://doi.org/10.1177/1473779519875464>

<sup>41</sup> Mei Ching Lim and others, 'Workplace Violence in Healthcare Settings: The Risk Factors, Implications and Collaborative Preventive Measures', *Annals of Medicine & Surgery*, 78 (2022) <https://doi.org/10.1016/j.amsu.2022.103727>

Recognizing the responsibility assumed by employers to maintain a safe and respectful workplace, free from harassment, the Violence and Harassment Convention (C190) specifically calls for “legislation requiring employers to take appropriate measures appropriate to their level of control to prevent violence and harassment in the world of work” by taking specific steps that include implementing and enforcing workplace policies and providing training to workers and others.<sup>42</sup> Malaysian law mandates employers to address allegations of sexual harassment, but it does not currently require them to implement proactive measures to prevent sexual harassment in the workplace. Including specific prevention requirements for employers, consistent with C190, could fortify Malaysia's legal framework against sexual harassment.

It is crucial to establish robust legislative prohibitions against sexual harassment in the workplace, in addition to equally robust prohibitions on mechanisms for prevention, law enforcement, and access to justice for all workers.<sup>43</sup> The Convention on Violence and Harassment requires “dispute resolution mechanisms outside the workplace,” and similar independent bodies can be of great help not only to workers who fear retaliation or inaction on the part of the company but also to workers who face resource and language barriers in filing claims in the court sector. Meanwhile, the Malaysian Labour Law establishes an independent external body where workers can file sexual harassment complaints in limited circumstances.<sup>44</sup>

As previously mentioned, the absence of comprehensive legislation explicitly addressing sexual harassment in Malaysia has resulted in regulatory challenges related to this issue. This has resulted in inadequate protection for victims. The absence of provisions for pursuing redress impedes victims' recovery despite the Labor Law amendment requiring investigation into complaints. Recently enacted, the Anti-Sexual Harassment Bill 2021 aims to rectify this shortcoming. However, it fails to adequately define harassment, protect victims from victimization, and delineate the responsibilities of employers.<sup>45</sup>

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<sup>42</sup> Madeleine Castles, Tom Hvala, and Kieran Pender, ‘Rethinking Richardson : Sexual Harassment Damages in the #MeToo Era’, *Federal Law Review*, 49.2 (2021), 231–71 <https://doi.org/10.1177/0067205X21993146>

<sup>43</sup> Ankita Sil, Subeh Chowdhury, and Roselle Thoreau, ‘Moving towards an Inclusive Public Transport System for Women in the South and Southeast Asian Region’, *Transport Reviews*, 43.6 (2023), 1144–64 <https://doi.org/10.1080/01441647.2023.2200983>

<sup>44</sup> Arisman Arisman and Ratnawati Kusuma Jaya, ‘Labour Migration in ASEAN: Indonesian Migrant Workers in Johor Bahru, Malaysia’, *Asian Education and Development Studies*, 10.1 (2020), 27–39 <https://doi.org/10.1108/AEDS-02-2019-0034>

<sup>45</sup> M. Misbahul Mujib and Mustari Kurniawati Muchlas, ‘Achievements and Challenges of Human Rights Protection Policy in Realizing Good Governance in Indonesia and China’, *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 328–60 <https://doi.org/10.53955/jhcls.v3i2.98>

Despite the existence of statutes such as the Malaysian Criminal Code and the Employment Act that offer protection, there are still deficiencies in the protection of all individuals from workplace harassment, including migrant workers. The alignment of domestic laws with international standards is also a challenge in the fight against related offenses, such as human trafficking. Additionally, the Criminal Code and the Code of Practice for the Prevention and Eradication of Sexual Harassment are among the existing laws that endeavor to regulate such violations. Overall, the preceding discourse indicates a growing recognition of the necessity for more robust legal provisions and enforcement mechanisms to address sexual harassment in the workplace in Malaysia.<sup>46</sup>

The prevalence of sexual harassment is on the rise despite the existence of laws such as the Criminal Code and the 1955 Employment Law, which suggests that more robust measures are required. The Government ensures the protection of all victims, regardless of their status, including citizens, non-citizens, and migrant laborers, by various laws and regulations. Furthermore, it is still imperative to underscore the significance of organizational climate in preventing sexual harassment in the workplace, emphasizing the necessity for organizations to establish policies and guidelines that foster a secure environment for their employees. The Malaysian Government endeavors to mitigate sexual harassment in the workplace and offer assistance to victims by enforcing and implementing these laws, policies, and guidelines, thereby resolving the issue of victimization. To achieve this objective, it is crucial to engage all employees in the development, execution, and oversight of workplace policies, in addition to undertaking routine risk assessments to prevent harassment. The active participation of all employees fosters a safe and respectful work environment, promoting a culture of transparency, trust, and accountability within the organization. Effective workplace harassment laws and policies can significantly reduce harassment and establish a secure work environment for all employees.<sup>47</sup>

### ***The Challenges in Enforcing Sexual Harassment Regulations in Singapore***

Sexual harassment and workplace violence are severe public health issues that affect women worldwide, resulting in substantial expenses due to personnel turnover and sick leave. However, our understanding of the prevalence of sexual harassment and violence at the population level, particularly in the employment sector, is lacking.<sup>48</sup> The reported global prevalence of sexual harassment and violence among women in the workplace differs significantly between studies,

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<sup>46</sup> Zaiton Hamin and others, 'Recent Development in Sexual Harassment Law in Malaysia: Whither the Victim's Protection?', *International Journal of Academic Research in Business and Social Sciences*, 12.11 (2022) <https://doi.org/10.6007/IJARBS/v12-i11/15225>

<sup>47</sup> Lawrence.

<sup>48</sup> Svava Dogg Jonsdottir and others, 'Risk Factors for Workplace Sexual Harassment and Violence among a National Cohort of Women in Iceland: A Cross-Sectional Study', *The Lancet Public Health*, 7.9 (2022), e763-74 [https://doi.org/10.1016/S2468-2667\(22\)00201-8](https://doi.org/10.1016/S2468-2667(22)00201-8)

with a range of 11–72%. Additionally, accumulating evidence indicates that these figures may vary by employment sector.<sup>49</sup> A high prevalence was observed among women in the scientific, technology, engineering, and mathematics sectors (46%), journalists (57%), and social and health workers (51-69%).<sup>50</sup>

The Ministry of Manpower describes workplace harassment as "conduct that causes or is likely to cause harassment, alarm, or distress to another party" and cites sexual harassment as an example. The Criminal Code (Article 223) also contains provisions relating to offenses involving words or gestures intended to insult a woman's modesty, as well as assault or the use of criminal force against a person with the intent to outrage that person's modesty.<sup>51</sup> The Protection from Harassment Act (Cap. 256A) ("POHA") was enacted on November 15, 2014, to safeguard individuals from illicit harassment and stalking and establish offenses and civil remedies in this regard. On January 1, 2020, amendments to POHA included protections and crimes related to "doxing," publishing confidential or identifying information about specific individuals. POHA's goal is not to prevent workplace or sexual harassment but to establish a legal framework that protects people from harassment in general.<sup>52</sup>

A variety of civil remedies and criminal sanctions are available under POHA to safeguard individuals from sexual harassment and other forms of abuse. A first-degree offense may result in a fine of no more than S\$5,000 and a penitentiary sentence of no more than 6 or 12 months, depending on where the violation occurred under the POHA. A fine of no more than S\$10,000 and imprisonment for no more than two years may be imposed for subsequent offenses. The government has issued various recommendations or advice to encourage employers to take the initiative in preventing workplace harassment, including sexual harassment. However, there is no strict legal requirement for employers to take action.<sup>53</sup>

For example, the Tripartite Advisory on Addressing Harassment in the Workplace ("Tripartite Advisory") guides workplace harassment prevention,

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<sup>49</sup> Sara A. Jahnke and others, 'The Prevalence and Health Impacts of Frequent Work Discrimination and Harassment among Women Firefighters in the US Fire Service', *BioMed Research International*, 2019 (2019), 1–13 <https://doi.org/10.1155/2019/6740207>

<sup>50</sup> Chithra R. Perumalswami and others, 'National Science Foundation Grant Awardees' Perspectives on Article X and Sexual Harassment in Science', ed. by Alex Siu Wing Chan, *PLOS ONE*, 19.4 (2024), e0300762 <https://doi.org/10.1371/journal.pone.0300762>

<sup>51</sup> Andrew Alan Johnson, 'Foreign Bodies: Horror and Intimacy in Singapore's Migrant Labor Regimes', *Positions: Asia Critique*, 31.1 (2023), 41–66 <https://doi.org/10.1215/10679847-10122112>

<sup>52</sup> Amy Lim and Peter Waring, 'Complexity and Opportunity in Diversity Challenges in Singapore', in *A Field Guide to Managing Diversity, Equality and Inclusion in Organisations* (Edward Elgar Publishing, 2022), pp. 240–51 <https://doi.org/10.4337/9781800379008.00029>

<sup>53</sup> K Gillander Gådin, K Persson, and K Zampoukos, 'Strategies to Prevent Sexual Harassment in the Hospitality Workplace in Sweden', *European Journal of Public Health*, 30.Supplement\_5 (2020) <https://doi.org/10.1093/eurpub/ckaa166.641>

including case studies of harassment prevention policies implemented by employers. The Tripartite Advisory also offers valuable information on implementing reporting and response procedures and guidance on investigative procedures that employers can use.

**Table 1.** Regulation of Sexual Offenses in Singapore

No.	Offense	Statute	Penalties
1	Voyeurism, such as planting cameras in the toilets	Section 377BB of the Penal Code	Fine, caning, up to 2 years' imprisonment or a combination of these.
2	Exposing one's genitals (also known as "flashing")	Section 377BF Penal Code	Fine, up to 1 year's imprisonment or both.
3	Non-physical sexual harassment, such as verbal sexual harassment	Section 3 of the Protection from Harassment Act (POHA)	Fine of up to \$5,000 or up to 6 months' imprisonment or both.
4	Outrage of modesty, such as molest	Section 354 of the Penal Code	Fine, caning, up to 3 years' imprisonment or a combination of these. (The maximum imprisonment term is increased to 5 years if the victim was below 14 years old.)
5	Stalking	Section 7 POHA	Fine of up to \$5,000 or up to 12 months' imprisonment or both.
6	Rape or sexual assault	Sections 375 or 376 Penal Code	Up to 20 years' imprisonment, and may include a fine or caning.

Table 1 shows that numerous regulations govern a variety of forms of sexual harassment. This demonstrates that the Singapore government employs a combination of statutory protection and common law approaches to address sexual harassment. Singapore transitioned to statutory protection due to the legal system's obstacles despite initially relying on common law torts. Generally, the government's approach entails the implementation of a legal and regulatory framework to enforce societal norms and combat sexual harassment. The Protection from Harassment Act (POHA) is the primary law in Singapore that addresses sexual harassment. This legislation specifically prohibits sexual harassment, criminalizing conduct that causes alarm, distress, or harassment to another individual. Furthermore, labor law encompasses the prevention of sexual

harassment in the workplace, which necessitates that employers establish a secure work environment by the law.<sup>54</sup>

The victim of sexual harassment has the option to report the incident to the authorities to safeguard their rights. Additionally, the victim may petition for a personal protection order (PPO) by the POHA. Victims may file a complaint with a judge for less severe harassment in certain situations. This may result in criminal proceedings and a mediation process. Nevertheless, civil litigation may be initiated against the perpetrator when sexual harassment has resulted in substantial suffering or loss for the victim.<sup>55</sup> At the same time, victims of workplace harassment are encouraged to follow the complaint procedures of their respective organizations. Employers and company executives are responsible for investigating and addressing these complaints.<sup>56</sup>

A combination of cultural, legal, and social factors presents challenges for the Singapore government in addressing cases of sexual harassment in the workplace. Harassment issues persist in the workplace despite the efforts of policymakers to promote diversity and inclusion. This is indicative of broader societal attitudes towards gender dynamics and power imbalances. As the legal framework for dealing with harassment has changed from a common law tort approach to statutory protection, there is ongoing debate about the scope and clarity of what is considered unacceptable behavior. Furthermore, the influx of foreign domestic workers into Singaporean households has prompted apprehensions about gender, class, and boundaries, emphasizing the challenges and concerns associated with intimate work and foreign workers' cultural perceptions. To effectively counteract workplace sexual harassment in Singapore, a comprehensive approach that includes legal reform, cultural change, and social awareness campaigns is necessary. These diverse challenges are complex.<sup>57</sup>

There are numerous deficiencies in Singapore's regulations regarding sexual harassment. The country initially employed common law to resolve harassment concerns; however, legal advancements disrupted this strategy, resulting in a transition to legal protection. Consequently, there are apprehensions regarding the

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<sup>54</sup> Joel Soon, 'A Comparative Analysis of Legislative Protection from Harassment: A View from Singapore', *Oxford University Commonwealth Law Journal*, 22.2 (2022), 177–204 <https://doi.org/10.1080/14729342.2022.2109272>

<sup>55</sup> Laura Vitis, 'Surveillant Assemblage: Overt, Covert, Movement and Social Surveillance in Domestic and Family Violence in Singapore', *Women's Studies International Forum*, 96 (2023), 102664 <https://doi.org/10.1016/j.wsif.2022.102664>

<sup>56</sup> Furaha-Joy Sekai Saungweme, Carol Chi Ngang, and Graham Towl, 'The Menace of Sexual Harassment in the Workplace', in *Sexual Harassment and the Law in Africa* (London: Routledge, 2024), pp. 1–13 <https://doi.org/10.4324/9781003373308-1>

<sup>57</sup> Keri Matwick and Kelsi Matwick, 'Comics and Humor as a Mode of Government Communication on Public Hygiene Posters in Singapore', *Discourse, Context & Media*, 46 (2022), 100590 <https://doi.org/10.1016/j.dcm.2022.100590>



uncertain and incomplete remedies currently available through existing common law and statutory protections against harassment. Furthermore, the absence of a clear and coherent mechanism for victims to seek redress for sexual harassment in the workplace in Singapore underscores the necessity of enacting laws to safeguard employees. These deficiencies underscore the pressing necessity for a more comprehensive and robust legal framework to address sexual harassment in Singapore effectively.

### *The Challenges in Enforcing Sexual Harassment Regulations in Indonesia*

Sexual harassment is the most appropriate term for understanding the meaning of sexual violence. The spectrum of sexual harassment is extensive, encompassing a variety of behaviors, including indecent behavior (e.g., poking, touching, caressing, embracing), the display of pornographic or obscene images, assault, and coercion.<sup>58</sup> Indecent acts include rape, threats to harm women when they refuse to provide sexual services, and forcing kissing or hugging.<sup>59</sup> Because of its broad scope, sexual harassment can occur in any location as long as there is a homogeneous community or a blend of men and women, as a result of its broad scope.<sup>60</sup> In the workplace, sexual harassment is also possible. Men who hold higher positions or are colleagues typically perpetrate sexual harassment. This is because the workplace is characterized by a work environment that facilitates the dissemination of sexual harassment, as well as the presence of quite intense relationships between men and women. Nevertheless, public spaces such as markets, streets, and public transportation frequently witness sexual harassment, often perpetrated by individuals the victim does not know.<sup>61</sup>

The number of cases of physical (non-verbal) sexual violence in 2020 was substantial, encompassing a variety of forms such as sexual abuse (1,136 cases), rape (762 cases), sexual harassment (294 cases), and sexual intercourse (156 cases). Of course, this figure does not accurately reflect the actual number of sexual violence cases that exist or have occurred but remain unreported. In 2021, the National Commission on Violence Against Women received 1,933 complaints regarding sexual violence, which is equivalent to an 81% increase. This surge in complaints is, of course, a challenge for *Komnas Perempuan*. Based on the 263 working days in 2021, *Komnas Perempuan* must manage an average of 16 cases daily

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<sup>58</sup> Rena Yulia, Aliyih Prakarsa, and Mohammad Reevany Bustami, 'Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia', *Journal of Indonesian Legal Studies*, 8.2 (2023) <https://doi.org/10.15294/jils.v8i2.72283>

<sup>59</sup> Aryati Hamzy, Cheng-Chung Chen, and Kuan-Ying Hsieh, 'Mental Health and Aggression in Indonesian Women', *Behavioral Sciences*, 13.9 (2023), 727 <https://doi.org/10.3390/bs13090727>

<sup>60</sup> Christian Wiradendi Wolor and others, 'Sexual Harassment and Its Impact on Employees', *Universal Journal of Public Health*, 12.1 (2024), 91–100 <https://doi.org/10.13189/ujph.2024.120109>

<sup>61</sup> Viani Picchetti and others, 'Association between Lifetime Sexual Violence Victimization and Selected Health Conditions and Risk Behaviors among 13–24-Year-Olds in Lesotho: Results from the Violence Against Children and Youth Survey (VACS), 2018', *Child Abuse & Neglect*, 134 (2022), 105916 <https://doi.org/10.1016/j.chiabu.2022.105916>

with limited resources. The number of instances that *Komnas Perempuan* had to respond to has nearly doubled compared to the average of 9 cases per day in 2020.<sup>62</sup>

The supremacy of law is a prerequisite for the legal protection of sexual harassment victims in Indonesia, as outlined in a variety of international regulations, such as the 1948 Universal Declaration of Human Rights, the International Covenant on Civil Procedure and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women in 1979, the Vienna Declaration (1986), the Declaration on the Elimination of Violence Against Women in 1994, and the Beijing Declaration and Platform for Action (1995).<sup>63</sup>

Sexual harassment is a prevalent issue in Indonesian social life. This is because, according to legal records, the number of cases of violence against females increased by 2,341 in comparison to 1,417 in the previous year. The number of cases of incest plus sexual violence increased by 65% in the prior year, with 571 cases. Sexual violence against women with disabilities increased by 47% compared to last year, with intellectual disabilities being the most common victims of inappropriate conduct or rape. The Criminal Code (KUHP) that governs this matter is not yet functioning effectively due to the incompleteness of its regulations regarding this matter. Sexual harassment may not result in physical discomfort or other adverse effects; however, it can be emotionally detrimental. Sexual harassment is frequently undetected in Indonesia due to legal deficiencies. Indonesian law's conception of harassment has undervalued the severity of the harassment victims endure, making it unable to provide them with justice.<sup>64</sup>

In reality, the Indonesian government has implemented numerous legal regulations that govern illicit acts of sexual violence. Nevertheless, rules concerning sexual offenses are inadequate until mid-2022. Furthermore, many regulations do not fully support and protect victims' rights. As a legal entity, Indonesia has established that the constitution safeguards each citizen equitably and equally, enabling them to lead a secure and tranquil existence. However, the truth remains that a substantial proportion of citizens, especially women,

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<sup>62</sup> Sri Endah Wahyuningsih and others, 'The Rights of the Victims in Submitting a Complaint against the Criminal Act of Counselling in Indonesia', *International Journal of Social Science And Human Research*, 05.11 (2022), 4820–27 <https://doi.org/10.47191/ijsshr/v5-i11-02>

<sup>63</sup> Pham Van Tu and others, 'The Impact of Sexual Harassment on Obesity in Female Adolescents: An Update and Perspective to Control', *Diabetes & Metabolic Syndrome: Clinical Research & Reviews*, 14.6 (2020), 1931–39 <https://doi.org/10.1016/j.dsx.2020.09.036>

<sup>64</sup> Fransisco Luis Soares and Nathanael Bagas Setyawan, 'Protection of Victims of Sexual Harassment in Indonesia: A Legal and Victimological Aspect', *Semarang State University Undergraduate Law and Society Review*, 3.1 (2023), 27–46 <https://doi.org/10.15294/lsr.v3i1.53761>

persistently endure unjust and unequal treatment. In reality, this disparity leads to sexual harassment and violence for a significant number of individuals.<sup>65</sup>

The Criminal Code does not explicitly regulate sexual harassment; instead, it associates it with moral offenses, particularly those related to sexuality. The Criminal Code Chapter XVI, Book II, titled "Crimes Against Morality in R. Soesilo's Book," governs sexual harassment. Article 281 states that anyone who intentionally damages public decency faces imprisonment for a maximum of two years and eight months or a fine of up to IDR 4,500. The article above reveals its inability to address the diverse forms of sexual harassment previously mentioned. Consequently, the article restricts victims of sexual harassment from reporting additional instances of non-verbal harassment. Furthermore, the Criminal Code (Articles 289 to 296) allows for the prosecution of sexual harassment as immoral. The public prosecutor will file complaints against the perpetrator in court, provided sufficient evidence exists. Victimology and legal protection for sexual harassment victims are also linked.<sup>66</sup>

The Criminal Procedure Code, specifically Articles 98 to 101, regulates protecting a person's rights in principle. However, the Criminal Procedure Code exclusively governs the protection of the rights of perpetrators of criminal acts. Indeed, the diversity of illicit activities is expanding as time progresses, resulting in numerous losses for witnesses and victims. The government promulgated Law Number 31 of 2014, an amendment to Law Number 13 of 2006, to protect witnesses and victims. To address the needs of victims of sexual harassment, this law regulates a variety of rights not previously regulated in the Criminal Procedure Code.<sup>67</sup> Discussions about criminalization often overlook the rights of victims. Numerous regulations govern the criminalization of an action. While outlining crimes subject to criminal penalties, the regulation does not explicitly address victims' rights. These types of incidents also occur in the rules that cover sexual violence, even though sexual violence is not just a criminal offense but rather a matter of much greater urgency and significance: the rights of the victims.<sup>68</sup>

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<sup>65</sup> Cheryl Regehr, Kaitlyn Regehr, and Arija Birze, 'Traumatic Residue, Mediated Remembering and Video Evidence of Sexual Violence: A Case Study', *International Journal of Law and Psychiatry*, 81 (2022), 101778 <https://doi.org/10.1016/j.ijlp.2022.101778>

<sup>66</sup> Endrianto Bayu Setiawan and others, 'The Indonesian Criminal Law System's Progression in Sexual Assaults Regulation', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 2022, 161-77 <https://doi.org/10.24090/volksgeist.v5i2.6690>

<sup>67</sup> Helena LG, 'Punishment for Perpetrators of Sexual Harassment against Women, as Victims in the Rich World in Indonesia', in *Proceedings of the 2nd International Conference on Law, Social Sciences and Education, ICLSSE 2020, 10 November, Singaraja, Bali, Indonesia (EAI, 2021)* <https://doi.org/10.4108/eai.10-11-2020.2303451>

<sup>68</sup> Tahta Pertiwi and Emy Rosnawati, 'Legal Protection for Women Victims of Sexual Harassment in Public Spaces in Sidoarjo Regency', *Indonesian Journal of Law and Economics Review*, 16 (2022) <https://doi.org/10.21070/ijler.v15i0.769>

The government ultimately passed the Bill on the Elimination of Sexual Violence, which was promulgated on May 9, 2022, under the name of the Sexual Violence Crime Law, after a protracted process. The Sexual Violence Crime Law defines sexual violence crime as "every act that satisfies the elements of a criminal act as regulated in this law and other acts of sexual violence as regulated in this law." Laws to the extent that this law regulates them. Additionally, the Sexual Violence Crime Law regulates evidence in investigations, prosecutions, and court trials and expands the scope of evidence beyond the Criminal Procedure Code. This can bolster the efficacy of cases that are submitted to the court to trap perpetrators of sexual violence.<sup>69</sup>

Nevertheless, the law remains insufficient in regulating corporate criminal liability and cannot provide restitution in the form of action rather than criminal sanctions.<sup>70</sup> The law should impose an unlimited punishment duration to achieve the most significant possible deterrent effect. In addition, there is no coordination between this law and other laws, such as the law on the elimination of domestic violence, pornography, and human trafficking.<sup>71</sup> Article 35 of Law Number 26 of 2000, about human rights courts, outlines the definition of compensation. This definition pertains to the losses that the state bears due to the perpetrator's inability to provide complete compensation for their responsibilities. Another study described a form of resolution based on the fact that victims of sexual harassment, regardless of their gender or age, were male or female. Sexual harassment can have a variety of effects, including psychological, physical, and occupational consequences. Forgiveness is one method by which the victim can alleviate the trauma they experience when seeking revenge against the perpetrator of sexual harassment. It is crucial to forgive, yet it is also a challenging endeavor. It is impossible to achieve forgiveness briefly, and each person's process will be unique.<sup>72</sup>

The issue of workplace harassment, particularly sexual harassment, has emerged as a significant challenge in the current global employment landscape, with important implications for both individuals and organizations. The legal deficiencies and social disparities in Indonesia present substantial obstacles to the

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<sup>69</sup> Mutiara Hamdalah, 'Looking for Justice in the Black Cloud: Providing Justice for Victims of Sexual Harassment in Indonesia', *Semarang State University Undergraduate Law and Society Review*, 2.2 (2022), 201–26 <https://doi.org/10.15294/lsr.v2i2.53755>

<sup>70</sup> Suparto Suparto and others, 'Administrative Discretion in Indonesia & Netherland Administrative Court: Authorities and Regulations', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 75–100 <https://doi.org/10.53955/jhcls.v4i1.189>

<sup>71</sup> Topo Santoso and Hariman Satria, 'Sexual-Violence Offenses In Indonesia: Analysis Of The Criminal Policy In The Law Number 12 Of 2022', *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, 10.1 (2023), 59–79 <https://doi.org/10.22304/pjih.v10n1.a4>

<sup>72</sup> Tri Astuti Handayani, Teguh Prasetyo, and Diding Rahmat, 'Legal Protection of Women Victims of Sexual Harassment in Indonesia', *UNIFIKASI: Jurnal Ilmu Hukum*, 6.2 (2019), 209 <https://doi.org/10.25134/unifikasi.v6i2.1939>

prevention of sexual harassment in the workplace. The ongoing occurrence of sexual harassment is tarnishing the workplace, traditionally regarded as a place for professional development and collaboration. Indonesia, a dynamic player in the Southeast Asian economy, is not immune to this problem. The prevalence of sexual harassment in the workplace continues to be a source of concern despite legislative efforts to address the issue. In Indonesia, sexual harassment is a prevalent issue in the workplace. To effectively combat sexual harassment in the workplace, it is necessary to implement both preventive and repressive measures, as well as to increase awareness and training regarding the legal protection of women. Additionally, legal regulations must be enhanced.<sup>73</sup>

The government continues to face challenges, including an incomplete and insufficient legal framework that undermines the justice provided to victims of sexual harassment, even though policy arrangements for handling cases of sexual harassment in Indonesia have been regulated in numerous laws and regulations.<sup>74</sup> In addition, the Violent Crime of Sexual Harassment (TPKS) Law lacks regulations regarding corporate criminal liability, necessitating improved coordination with existing laws. Despite these challenges, Indonesia has strategies to prevent and address sexual harassment in the workplace. These include policy development, training, raising public awareness of sexual harassment, and establishing a complaint procedure system to facilitate reporting victims' experiences.<sup>75</sup> The Government must implement preventive and repressive measures to prevent sexual harassment against women.

### ***Reconstruction of Sexual Harassment Regulation in ASEAN Countries***

Cultural taboos and conservative values impede the reconstruction of sexual disclosure regulations in ASEAN countries. Despite ASEAN's endeavors to advance human security and gender equality, an ontological divide exists between ASEAN and UN-led initiatives, which impedes the efficient attainment of gender equality. To enhance the rights of women and children in the region and harmonize human rights attitudes, the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) have been established. Nevertheless, the securitization of women's rights at the regional and state levels in ASEAN continues to be a multifaceted issue, with limited concrete action being

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<sup>73</sup> Nailah Rasikhah and Sugeng Hariyanto, 'The Role Of Legal Office In Handling Cases Of Sexual Harassment Toward Impoverished Society', *Jurnal Pendidikan Sosiologi Dan Humaniora*, 14.1 (2023), 12 <https://doi.org/10.26418/j-psh.v14i1.54994>

<sup>74</sup> Malvin Ping Chieng Tan and others, 'The Importance of Organizational Climate for Psychosocial Safety in the Prevention of Sexual Harassment at Work', *Journal of Occupational Health*, 62.1 (2020) <https://doi.org/10.1002/1348-9585.12192>

<sup>75</sup> Kalijunjung Hasibuan and Muhamad Romdoni, 'The Impact of the Legal Framework and Reporting Mechanisms in Eradicating Sexual Harassment in the Workplace in Indonesia', *The Easta Journal Law and Human Rights*, 2.01 (2023), 9–16 <https://doi.org/10.58812/eslhr.v2i01.148>

taken to resolve women's obstacles. A comprehensive approach that considers cultural sensitivities, regional dynamics, and international norms is necessary to ensure the effective implementation and preservation of women's rights in reconstructing sexual regulations in ASEAN countries.<sup>76</sup>

ASEAN's initiatives to advance gender equality indirectly safeguard victims of sexual harassment, thereby enhancing human security. ASEAN's participation in global initiatives such as the Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs) indirectly benefits victims of sexual harassment by addressing issues related to human security and gender equality. Continuous endeavors are required to guarantee that the policies and initiatives of ASEAN member countries are consistent with international standards regarding human rights, gender, and sexuality.<sup>77</sup>

A comprehensive approach that encompasses education, policy implementation, and human rights protection is necessary to address the escalating incidences of sexual harassment in ASEAN countries. Sex education is critical to empowering children and reducing the incidence of sexual assault.<sup>78</sup> To provide children with the knowledge and cognizance necessary to safeguard themselves, the government must prioritize sex education programs. Furthermore, the adequate protection and promotion of human rights, including the eradication of sexual harassment, are contingent upon the strengthening of human rights organizations like the AICHR and ACWC. Furthermore, it is imperative to adopt a gender-sensitive approach to combating online gender-based violence, which underscores the necessity of an inclusive technology sector and more stringent regulations to safeguard women and gender minorities. Combining these efforts, ASEAN countries can effectively reduce and prevent sexual harassment.<sup>79</sup>

It is imperative to establish a comprehensive workplace harassment policy that encompasses a variety of forms of harassment, such as verbal, psychological, physical, and sexual harassment, to establish regulations that are effective in reducing the incidence of sexual harassment. Furthermore, it is critical to reframe unwanted behavior as sexual harassment to legitimize access to formalized redress pathways and provide resistance to victims. This underscores the

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<sup>76</sup> Nur Ain Yaacob and others, 'Sex Education for Children: A Betterment Pathway for ASEAN Member States', in *Charting a Sustainable Future of ASEAN in Business and Social Sciences* (Singapore: Springer Singapore, 2020), pp. 477–89 [https://doi.org/10.1007/978-981-15-3859-9\\_41](https://doi.org/10.1007/978-981-15-3859-9_41)

<sup>77</sup> Anthony J. Langlois and others, 'Community, Identity, Orientation: Sexuality, Gender and Rights in ASEAN', *The Pacific Review*, 30.5 (2017), 710–28 <https://doi.org/10.1080/09512748.2017.1294613>

<sup>78</sup> Nurfaika Ishak, Romalina Ranaivo, and Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31–44 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.24>

<sup>79</sup> Nhelbourne Mohammad and others, 'Human Trafficking Issue in ASEAN Countries: A Discussion to Overcome', *Sang Pencerah: Jurnal Ilmiah Universitas Muhammadiyah Buton*, 9.1 (2023), 1–9 <https://doi.org/10.35326/pencerah.v9i1.3098>

significance of labeling and confronting sexual harassment in organizational policies and legal frameworks.<sup>80</sup>

Although numerous ASEAN companies have policies and committees to address sexual harassment, there is a shortage of comprehensive qualitative information regarding prevention and resolution strategies, underscoring the need for improvement to comply with legal requirements. Furthermore, the existing limitations in anti-discrimination laws pose challenges to the legal treatment of sexual harassment cases, particularly in the context of issues like employer liability and same-sex harassment. This underscores the necessity of enhancing gender equality laws. As previously mentioned, Malaysia, Singapore, and Indonesia continue to have deficiencies in their policies regarding sexual harassment cases that fail to ensure victims receive justice. Furthermore, certain countries' workplace policies do not yet provide victims with a distinct and consistent method of pursuing redress for sexual harassment. As a result, it is critical to establish more comprehensive regulations that protect victims' rights and cultivate an anti-sexual harassment organizational culture.

#### 4. Conclusion

Based on the discussion that has been mentioned, it can be concluded, *first*, the absence of comprehensive laws that specifically address sexual harassment in Malaysia is the root cause of regulatory challenges. Despite the existence of laws such as the Malaysian Criminal Code and the Employment Act that offer protection, there are still deficiencies in the protection of all individuals from workplace harassment, including migrant laborers. *Secondly*, Singapore initially employed common law to resolve harassment concerns; however, legal advancements disrupted this strategy, resulting in a transition to legal protection. Consequently, there are apprehensions regarding the uncertain and incomplete remedies currently available through existing common law and statutory protections against harassment. Furthermore, the absence of a clear and coherent mechanism for victims to seek redress for sexual harassment in the workplace in Singapore underscores the necessity of enacting laws to safeguard employees. *Third*, Indonesia has implemented numerous rules and regulations to regulate the policy provisions for sexual harassment cases. However, the government still faces challenges, such as an incomplete and insufficient legal framework that denies victims justice. In addition, the TPKS Law lacks regulations regarding corporate criminal liability, necessitating improved coordination with existing laws. *Fourth*, despite ASEAN's efforts to promote human security and gender equality, an ontological divide between ASEAN and UN-led programs impedes the efficient

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<sup>80</sup> Akanksha Jumde and Nishant Kumar, "Sexual Misconduct at Workplace and Indian Corporate and Securities Law: Exploring Corporate Disclosures of Sexual Harassment Cases by Indian Companies in #MeToo Era", *International Journal of Law and Management*, 65.4 (2023), 306–32 <https://doi.org/10.1108/IJLMA-06-2022-0124>

attainment of gender equality. It is critical for the reconstruction of comprehensive workplace harassment policies that address multiple forms of harassment to develop effective regulations that can reduce the incidence of sexual harassment. As a result, it is critical to establish an anti-sexual harassment organizational culture and to restructure sexual harassment cases' regulations more comprehensively to protect victims' rights.

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