

Normative-Conceptual Analysis of Physical Evidence Recognition under the Sexual Violence Law in Indonesian Criminal Procedure

Alvin Evrialdo Noerdin¹, Hajim Lasabuda², Iip Purwantini Jeane Mamonto³

¹Universitas Dumoga Kotamobagu, Kotamobagu, Indonesia,. E-mail: avlinaldo99@gmail.com

²Universitas Dumoga Kotamobagu, Kotamobagu, Indonesia,. E-mail: lasabudabajim@gmail.com

³YL.BH Bolaang Mongondow Raya, Kotamobagu, Indonesia,. E-mail: iippjmamonto@gmail.com

Article	Abstract
<p>Keywords: evidence law; criminal procedure; physical evidence; legal reform;</p> <p>Article History: Received: 19/06/2025 Reviewed: 20/06/2025 Accepted: 21/06/2025 Published: 21/06/2025</p> <p>DOI: (to be assigned upon DOI activation)</p>	<p>This study examines the normative reconstruction of evidentiary regulation within Indonesia's criminal procedural law, focusing on the recognition of physical evidence as part of legally admissible evidence within the legal framework addressing sexual violence crimes. This development reflects a shift from the previously closed and limited system of evidence classification toward a more open evidentiary model. Using a normative legal research method and a conceptual approach, this analysis explores the legal status and systemic implications of such recognition, particularly in relation to the principle of legality, fair trial rights, and legal certainty. On one hand, this expansion offers opportunities for a more victim-centered evidentiary process; on the other hand, it risks normative inconsistency if not harmonized with existing procedural law. The findings highlight the need for regulatory adjustment and uniform judicial guidelines to maintain balance between victim protection and the fundamental rights of defendants. This study contributes to the ongoing discourse on criminal procedural law reform in Indonesia, emphasizing the importance of adaptive yet procedurally just evidentiary frameworks in response to evolving social dynamics.</p>
Artikel	Abstrak
<p>Kata Kunci: hukum pembuktian; hukum acara pidana; barang bukti; reformasi hukum;</p> <p>Riwayat Artikel: Diterima: 19/06/2025 Ditinjau: 20/06/2025 Disetujui: 21/06/2025 Diterbitkan: 21/06/2025</p> <p>DOI: (akan ditetapkan setelah aktivasi DOI)</p>	<p>Studi ini mengkaji rekonstruksi normatif pengaturan alat bukti dalam hukum acara pidana Indonesia, dengan menyoroti pengakuan barang bukti sebagai bagian dari alat bukti dalam kerangka hukum tindak pidana kekerasan seksual. Ketentuan ini mencerminkan pergeseran dari sistem pembuktian yang selama ini bersifat tertutup menuju model yang lebih terbuka dalam pengklasifikasian alat bukti. Dengan menggunakan metode penelitian hukum normatif dan pendekatan konseptual, kajian ini menganalisis kedudukan hukum serta implikasi sistemik dari pengakuan barang bukti tersebut, khususnya dalam kaitannya dengan asas legalitas, prinsip peradilan yang adil, dan kepastian hukum. Di satu sisi, perluasan pengakuan alat bukti ini membuka peluang bagi proses pembuktian yang lebih responsif terhadap kebutuhan perlindungan korban. Namun di sisi lain, tanpa harmonisasi dengan ketentuan hukum acara pidana yang berlaku, potensi disharmoni norma tetap menjadi tantangan. Hasil kajian ini menegaskan bahwa pengakuan barang bukti sebagai alat bukti yang sah memerlukan pembaruan regulasi dan pedoman yudisial yang seragam, untuk memastikan keseimbangan antara perlindungan hak korban dan jaminan hak-hak dasar terdakwa. Temuan ini berkontribusi dalam wacana reformasi hukum acara pidana di Indonesia, khususnya dalam merespons dinamika sosial yang menuntut sistem pembuktian yang adaptif namun tetap menjamin keadilan prosedural.</p>

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Introduction

The development of criminal procedure law in Indonesia reflects an inherent tension between the pursuit of substantive justice and the demand for legal certainty through rigid procedures. This tension becomes particularly pronounced in cases of sexual violence, given the unique characteristics of such crimes, which often occur without witnesses, leave limited evidence, and involve unequal power dynamics between the perpetrator and the.¹ The weakness of the evidentiary process remains a significant factor contributing to the low prosecution success rates against perpetrators of sexual violence.²

In response to this reality, Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS) was enacted with a progressive spirit, offering various victim-centered legal mechanisms, including adjustments in the evidentiary process. One notable provision is Article 24 paragraph (1) letter c of the UU TPKS, which explicitly includes "physical evidence" as one form of "legal evidence." This provision stands out as it departs from the existing formulation in the Criminal Procedure Code (KUHAP), which only enumerates five types of legal evidence, thereby triggering debate regarding its normative position within the prevailing evidentiary framework.³

The inclusion of physical evidence in Article 24 paragraph (1) letter c of the UU TPKS was essentially intended to address the challenges victims face in presenting conventional forms of evidence such as witnesses and documents. However, this raises a fundamental question: does incorporating physical evidence as legal evidence represent a legitimate legislative innovation, or does it deviate from the principle of formal legality that underpins criminal justice? This is not merely a matter of terminology but touches on the core legitimacy of the criminal adjudication process itself.

Conceptually, the distinction between physical evidence and legal evidence lies not only in legal classification but also in their functional roles within the evidentiary process. Legal evidence constitutes a legal category with recognized probative value under procedural law, whereas physical evidence generally refers to objects or materials related to a criminal act that may support the existence of legal evidence.⁴ Within a rigid evidentiary system, merging these two categories may foster legal uncertainty and open opportunities for the abuse of discretion in evidence assessment.

This research is driven by an academic curiosity to explore how the norm in Article 24 paragraph (1) letter c of the UU TPKS should be interpreted and positioned within Indonesia's criminal procedural system. While the provision is designed to strengthen victim protection, it may inadvertently create normative disharmony that undermines the principle of due process of law. It is therefore crucial to examine this provision not only from a victim protection standpoint but also within the systemic structure of national criminal procedure law.⁵

Several previous studies have addressed this issue from different perspectives. A critical note by the Indonesian Criminal Justice Reform highlights potential risks of violating the fair trial principle

¹ Adi Herisasono, Angraini Rosiana Efendi, dan Oscha Davan Kharisma, "Implementasi Pembuktian Tindak Pidana Kekerasan Seksual dalam Perspektif Undang-undang Nomor 12 Tahun 2022," *Preferensi Hukum* 4, no. 3 (2023): 292–298, <https://doi.org/10.55637/jph.4.2.6589.292-298>.

² Regina Biandina, Altje Agustin Musa, dan Herlyanty Yuliana A. Bawole, "Analisis Yuridis Pembuktian Hukum Pidana dalam Tindak Pidana Kekerasan Seksual Berbasis Elektronik," *Lex Privatum Jurnal Fakultas Hukum* 15, no. 2 (2025): 1–9.

³ Nilma Suryani, Najmuddin, dan Achmad Megantara, "Analisis Perubahan Barang Bukti Menjadi Alat Bukti Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Das Sollen* 10, no. 2 (2024): 86–103, <https://doi.org/10.32520/das-sollen.v10i2.3715>.

⁴ Fitri Darizta, Selin Sufitri, Herlina Firdaus, M. Fathony, dan Desti Indah Sari, "Barang Bukti dalam Hukum Pembuktian di Indonesia," *Lex Stricta: Jurnal Ilmu Hukum* 2, no. 3 (2024): 113–128, <https://doi.org/10.46839/lexstricta.v2i2.29>.

⁵ Ongki Metuak, "Kajian Hukum Terhadap Perbedaan Alat Bukti dan Barang Bukti dalam Hukum Acara Pidana," *Lex Crimen* 8, no. 3 (2019): 66–74.

when evidence collection is not preceded by proper forensic procedures conducted by investigators.⁶ Meanwhile, Suryani et al. examine the normative differences between the Sexual Violence Crime Act (UU TPKS) and the Indonesian Criminal Procedure Code (KUHAP), but have yet to conceptually elaborate on how these differences impact the broader reform of criminal procedural law.⁷ In contrast, Hairi et al. focus on field-level implementation from the perspectives of law enforcement officers and victims, without sufficiently exploring the dimension of due process of law, particularly concerning the protection of rights for individuals who are confronted as alleged offenders in criminal proceedings.⁸

Departing from these prior works, this article positions Article 24 paragraph (1) letter c of the UU TPKS as a transitional phenomenon within Indonesia's criminal evidentiary system. By examining its relevance to the reform trajectory set forth in the 2025 Draft Criminal Procedure Code, this article offers an integrative and forward-looking analysis. It argues that the expansion of legal evidence under the UU TPKS should not be viewed in isolation but as part of a broader reconstruction of the national criminal evidentiary framework that remains responsive while upholding legal certainty.

The urgency of this research also stems from global trends advocating for a more victim-centered approach, particularly in cases of sexual violence,⁹ while still preserving fair trial principles. As a state governed by law, Indonesia must not sacrifice the fundamental tenets of criminal procedure in response to emotional demands for justice for victims. A more proportionate approach is required, one that accommodates evidentiary challenges in sexual violence cases without undermining the systematically constructed legal structure embodied in the KUHAP.¹⁰

The central research question posed in this study is: Does the recognition of physical evidence as legal evidence under Article 24 paragraph (1) letter c of the UU TPKS constitute a legitimate form of legislative innovation, or does it risk disrupting the established evidentiary system under the KUHAP? This question will be addressed by analyzing the legal logic embedded in the provision and evaluating its potential practical consequences within the criminal justice system.

This study is limited to the normative aspects of evidentiary law as regulated in the UU TPKS and the KUHAP. It does not examine sociological aspects or empirical implementation, nor does it assess specific case studies, but focuses on normative comparisons between the relevant regulations.

The primary aim of this research is to provide a comprehensive and critical explanation of the position of "physical evidence" as "legal evidence" within Indonesia's criminal procedure framework. Furthermore, it seeks to contribute to scholarly discourse on how national law should balance victim protection demands with the principle of legality, the rights of the accused, and the exclusionary rules of evidence.¹¹

While previous literature, including that of Indonesian Criminal Justice Reform, expresses concerns

⁶ Ichsan Zikry, "Catatan atas Dikualifikasikannya Barang Bukti sebagai Alat Bukti," 2022, <https://icjr.or.id/catatan-atas-dikualifikasikannya-barang-bukti-sebagai-alat-bukti/>.

⁷ Nilma Suryani, Najmuddin, dan Achmad Megantara, "Analisis Perubahan Barang Bukti Menjadi Alat Bukti".

⁸ Prianter Jaya Hairi, Marfuatul Latifah, "Implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual," *Negara Hukum* 14, no. 2 (2023): 163-179, <https://doi.org/10.22212/jnh.v14i2.4108>

⁹ Dewa Permana Wiratma, Darmawati, dan Sumiyati Beddu, "Analisis Viktimologi Terhadap Tindak Pidana Kekerasan Seksual Terhadap Anak di Kabupaten Gorontalo," *Constitutional Law Review* 3, no. 2 (2024): 97-115, <https://doi.org/10.30863/clr.v3i2.5629>.

¹⁰ Aji Febrian Nugroho, "Legal Protection for Victims of Fair Trial Rights As a Form of Human Rights Protection in the Indonesian Justice System," *Policy, Law, Notary and Regulatory Issues (Polri)* 2, no. 1 (2023): 1-12, <https://doi.org/10.55047/polri.v2i1.493>.

¹¹ Delvino Aldy Djiwandono, Felicia Tanalina Ylma, dan Diqa Qothrunnada Amanda Sella Nur, "Prinsip Exclusionary Rules of Evidence dalam Pembuktian Tindak Pidana Narkotika," *UNES Law Review* 6, no. 4 (2024): 12066-12080, <https://doi.org/10.31933/unesrev.v6i4>.

about the blurred distinction between physical and legal evidence under the UU TPKS, this study moves beyond critique to offer a hermeneutic interpretation of the legislators' normative intent and seeks possible reconciliations between victim protection and procedural justice.

Accordingly, this research aspires to contribute to the development of criminal procedure discourse in Indonesia, particularly in harmonizing regulatory innovation with the foundational principles of justice. This article is not only academically relevant but may also serve as a reference for policymakers, law enforcement officers, and legal practitioners in accurately interpreting and applying Article 24 paragraph (1) letter c of the UU TPKS.

Research Method

This research employs a normative (doctrinal) legal approach, which focuses on analyzing statutes and legal doctrines as the primary sources for examining legal issues.^{12,13} The study adopts a conceptual and systematic design aimed at analyzing Article 24 paragraph (1) letter c of Law Number 12 of 2022 on Sexual Violence Crimes, particularly concerning the recognition of "physical evidence" as part of "legal evidence," and assessing its position within the structure of the criminal evidentiary system as regulated under Article 184 of the Criminal Procedure Code (KUHAP). The scope of this research is limited to a normative analysis of the concepts of legal evidence and physical evidence within the criminal procedural law framework, without addressing empirical aspects related to the practical implementation of the UU TPKS.

The data sources for this research consist of primary and secondary legal materials.¹⁴ The primary legal materials include statutory regulations that serve as the main objects of study, namely the KUHAP and the UU TPKS. Secondary legal materials consist of academic literature, textbooks, scholarly articles, legal journals, expert opinions, and relevant institutional documents. This study relies entirely on written documents and does not utilize empirical instruments such as questionnaires or interviews. The data collection technique is based on library research, which involves systematic searches of regulations, academic publications, and scientific articles.¹⁵ The literature search was conducted using legal repositories, digital libraries, and national legal journal databases. To ensure the quality and depth of the analysis, the selection of sources was based on substantive relevance, with preference given to more recent publications from the past five to ten years.

Analysis and Discussion

The Concept of Legal Evidence and Physical Evidence in the Criminal Procedure Code (KUHAP)

Legal evidence holds a central role in Indonesia's criminal procedural law, as it determines whether a criminal act can be proven validly and convincingly. Article 184 paragraph (1) of the KUHAP explicitly enumerates five types of admissible legal evidence: witness testimony, expert testimony, documents, indications, and the defendant's statement. This provision reflects the principle of *numerus clausus* (closed enumeration), whereby only the types of evidence expressly listed in the statute may be admitted during trial. Such a system is designed to uphold legal certainty and prevent abuses within the criminal justice process, emphasizing the procedural legality principle

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005).

¹³ Yati Nurhayati, Ifrani Ifrani, dan M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20, <https://doi.org/10.51749/jphi.v2i1.14>.

¹⁴ Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Jurnal Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

¹⁵ Depri Liber Sonata, "Metode Penelitian Hukum Normatif dan Empiris: karakteristik Khas dari Metode Meneliti Hukum," *Fiat Justisia: Jurnal Ilmu Hukum* 8, no. 1 (2014): 15–35, <https://doi.org/10.25041/fiatjustisia.v8no1.283>.

(legaliteitsbeginsel) as a safeguard against arbitrary actions by law enforcement authorities.¹⁶

In criminal procedure doctrine, the distinction between legal evidence and physical evidence is not merely a matter of terminology but carries differing levels of probative value and legal consequence. Legal evidence possesses direct probative force, whereas physical evidence does not, standing instead as an object that must be further processed or interpreted through recognized legal evidence categories.¹⁷ Therefore, conflating or equating these categories normatively risks creating legal uncertainty and opens the door to potential manipulation within the evidentiary process.

Furthermore, in Indonesian criminal practice, the term “physical evidence” is often used to refer to objects or items, whether directly or indirectly related to the alleged crime. However, the KUHAP does not explicitly categorize physical evidence as legal evidence (Muktarudin 2024). The term may be inferred from Article 39 of the KUHAP, which regulates objects subject to seizure, including items specifically created or designated for committing criminal acts.¹⁸

Physical evidence serves to support the existence or validity of formal legal evidence, such as documents or indications, but lacks independent probative force.¹⁹ For example, a blood-stained knife may strengthen an indication, but it cannot independently serve as legal evidence under formal law. In more technical scenarios, such as blood-stained clothing or sperm samples, forensic examination is required to determine their source, the results of which would constitute written expert findings (documentary evidence).

The study by Darizta et al. emphasizes the significant role physical evidence plays within Indonesia’s criminal adjudication process, even though its legal meaning is not explicitly defined in the KUHAP. Physical evidence may functionally transform into admissible legal evidence in practice; however, its legal weight remains inseparable from the existence of formal legal evidence. Physical evidence serves as a supplementary element to the five recognized categories of legal evidence under the KUHAP: witness testimony, expert testimony, documents, indications, and the defendant’s statement.²⁰ Similarly, Mulyani’s research explains that physical evidence (*corpus delicti*) itself is not legal evidence but rather serves as supplementary support for legal evidence recognized by the KUHAP.²¹

Within this framework, it is crucial to understand that Indonesia’s criminal evidentiary system adheres to the *negatief wettelijk stelsel* principle, which requires at least two valid forms of legal evidence combined with the judge’s conviction to impose a criminal sentence.²² Article 183 of the KUHAP explicitly states that this requirement serves to uphold truth, justice, and legal certainty for all individuals. Therefore, although physical evidence plays an important supporting role, it cannot independently serve as a basis for conviction without corroboration by valid legal evidence. This further illustrates that any normative conflation between legal evidence and physical evidence, without proper legal clarification, may trigger legal uncertainty and jeopardize defendants’ rights in criminal proceedings.

¹⁶ Tristam P. Moeliono dan Widati Wulandari, “Asas Legalitas dalam Hukum Acara Pidana: Kritikan terhadap Putusan MK tentang Praperadilan,” *Jurnal Hukum Ius Quia Iustum* 22, no. 4 (2015): 594–616, <https://doi.org/10.20885/iustum.vol22.iss4.art4>.

¹⁷ Monang Siahaan, “Perbedaan Hakiki Alat Bukti Dengan Barang Bukti,” *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 3, no. 2 (2016): 48–63, <https://doi.org/10.32493/SKD.v3i2.y2017.511>.

¹⁸ Ichsan Zikry, “Catatan atas Dikualifikasikannya Barang Bukti sebagai Alat Bukti.”

¹⁹ Lokas Richard, “Barang Bukti Dan Alat Bukti Dalam Kitab Undang-Undang Hukum Acara Pidana,” *Lex et Societatis* 3, no. 9 (2015): 124–129, <https://doi.org/10.35796/les.v3i9.10177>.

²⁰ Fitri Darizta, et. al., “Barang Bukti dalam Hukum Pembuktian di Indonesia.”

²¹ Erni Sri Mulyani, “Kedudukan Hukum Barang Bukti Terhadap Pertimbangan Hakim dalam Perkara Pidana Berdasarkan Sistem Pembuktian Dalam KUHAP,” Universitas Pasundan, 2016.

²² Monang Siahaan, “Perbedaan Hakiki Alat Bukti Dengan Barang Bukti.”

Consistent with the understanding that physical evidence cannot independently establish guilt, Indonesia's criminal evidentiary system remains firmly rooted in the principle of formal legality, as expressed in the *nullum iudicium sine lege* doctrine embodied in Article 3 of the KUHAP, which states that adjudication shall be conducted in accordance with procedures specified by law.²³ The existence and importance of procedural legality serve the same function: to prevent abuses of power by criminal justice officials, particularly judges, when deciding criminal cases (Awilda et al. 2023). Even with respect to modern forms of evidence such as electronic surveillance (e.g., CCTV footage), debate continues as to whether such materials qualify as legal evidence or should merely serve as physical evidence or indirect support for other legal evidence, such as indications.^{24 25}

This illustrates that the KUHAP's evidentiary system remains closed and does not permit unrestricted expansion of legal evidence categories without explicit statutory authorization. This restriction stems directly from the principle of formal legality, as firmly stated in Article 3 of the KUHAP, which requires criminal adjudication to follow the procedures established in the statute.

Moreover, Article 284 paragraph (2) of the KUHAP reaffirms the code's position as the general criminal procedural law applicable to all criminal cases, except where temporary special procedures are stipulated by other laws, unless amended or repealed. This means that while sectoral statutes such as the UU TPKS reflect reformative intent, their provisions cannot automatically override the evidentiary system already defined in the KUHAP, unless explicitly recognized as *lex specialis*. Therefore, cautious interpretation is required when expanding legal evidence categories (as in Article 24 paragraph (1) letter c of the UU TPKS) to prevent normative disharmony.

The Regulation of Evidence in the Sexual Violence Law as Addition or Deviation from the Evidentiary System

The Sexual Violence Law (UU TPKS) introduces a new formula into Indonesia's criminal evidentiary system. Specifically, Article 24 paragraph (1) letter c of the UU TPKS stipulates that evidence in sexual violence cases consists of: evidence as defined under the KUHAP, electronic evidence regulated under separate legislation, and physical objects used in the commission of the crime, obtained from the crime, or otherwise related to the offense. This provision explicitly includes "physical evidence" within the category of admissible legal evidence, a formulation not previously recognized under Indonesia's criminal procedural law. Its wording has sparked academic and practical debate, as it implies a departure from the previously closed evidentiary model codified in Article 184 of the KUHAP.²⁶

Some scholars view this approach as a progressive breakthrough designed to ease the burden of proof in sexual violence cases, which have historically been difficult to prosecute through conventional evidentiary standards. The UU TPKS attempts to expand the scope of admissible evidence by providing more detailed explanations absent from the KUHAP, while simultaneously offering procedures that are more sensitive to victims' trauma.^{27 28} By elevating physical evidence to the status of legal evidence, the law allows such objects to stand independently in the evidentiary hierarchy, rather than merely supplementing existing legal evidence categories.

²³ Tristam P. Moeliono dan Widati Wulandari, "Asas Legalitas dalam Hukum Acara Pidana."

²⁴ Verencia Pricilia Ponto, Kindom Makkulawuzar, dan Haritsa, "Efektivitas Hukum Penegakan CCTV Sebagai Alat Bukti Dalam Penegakan Hukum Tindak Pidana Pencurian di Kota Gorontalo," *Unisan Law Review* 1, no. 5 (2024): 1–15, <https://doi.org/10.37195/ulr.v8i1.823>.

²⁵ Nilma Suryani, Najmuddin, dan Achmad Megantara, "Analisis Perubahan Barang Bukti Menjadi Alat Bukti".

²⁶ Ichsan Zikry, "Catatan atas Dikualifikasikannya Barang Bukti sebagai Alat Bukti."

²⁷ Vanessa Ileana Angjaya, Ni Ketut Putri Sedani, dan Dave David Tedjokusumo, "Terobosan Hukum dalam Tindak Pidana Kekerasan Seksual: Perluasan Alat Bukti untuk Melindungi Korban," *IURIS STUDIA: Jurnal Kajian Hukum* 5, no. 2 (2024): 551–557, <https://doi.org/10.55357/is.v5i2.653>.

²⁸ Adi Herisasono, Angraini Rosiana Efendi, dan Oscha Davan Kharisma, "Implementasi Pembuktian Tindak Pidana Kekerasan Seksual dalam Perspektif Undang-undang Nomor 12 Tahun 2022," *Preferensi Hukum* 4, no. 3 (2023): 292–298, <https://doi.org/10.55637/jph.4.2.6589.292-298>.

Nevertheless, this approach has been criticized from the perspective of criminal procedural systematics. Doctrinally, Indonesia's evidentiary system under the KUHAP rests upon the principles of procedural legality and legal certainty.^{29 30} Introducing new types of evidence beyond those listed in Article 184 of the KUHAP, without formally amending the code, risks creating normative disharmony. This raises the critical question of whether the provision in the UU TPKS qualifies as a valid *lex specialis* capable of superseding the KUHAP (*lex generalis*), or whether it threatens the doctrinal coherence of Indonesia's criminal procedural system.

On the other hand, Article 20 of the UU TPKS states that investigation, prosecution, and adjudication of sexual violence cases shall be conducted in accordance with general criminal procedural law, unless otherwise specified by the UU TPKS itself. This provision offers a basis for interpreting certain aspects of the UU TPKS as *lex specialis*, including its evidentiary provisions. However, whether the recognition of physical evidence as legal evidence constitutes a genuine normative deviation or simply reinforces a contextualized evidentiary approach tailored to sexual violence remains open to analysis.

The subsequent question is how this provision should be properly interpreted. If it is understood as introducing an entirely new category of legal evidence, it may establish a precedent that allows sectoral legislation to continually expand the list of admissible evidence, potentially leading to fragmentation within Indonesia's unified criminal evidentiary system. Conversely, if one interprets physical evidence under the UU TPKS as still contingent upon and supportive of existing categories of legal evidence under the KUHAP (for instance, strengthening indications or documents), then the provision may not truly expand the list of evidence types, but instead reaffirms the role of physical evidence within the context of sexual violence litigation.

This divergence in interpretation suggests that Article 24 paragraph (1) letter c of the UU TPKS demands a systemic reading. Without interpretive clarity, its application may generate inconsistencies in court practice. On one hand, prosecutors and judges may rely on the provision to strengthen victims' positions and expand access to justice; on the other, defendants may face unfair proceedings if distinctions between the information contained within physical objects and the legally sanctioned means of obtaining such evidence are blurred. This concern implicates the exclusionary rules of evidence, which unfortunately remain inconsistently applied in Indonesia.³¹ This distinction also underscores the fundamental difference between legal evidence and the means of obtaining legal evidence.

As an illustration, consider a rape case where physical evidence in the form of the victim's clothing, potentially containing biological traces such as sperm, blood, or hair, is seized by investigators. Under KUHAP, such clothing would be classified as physical evidence due to its presumed connection to the alleged crime. However, reaching a conclusion that the object constitutes legally relevant evidence requires prior forensic examination to establish its relevance and authenticity. Without supporting results from such forensic examinations, referred to as criminalistic technical analysis,³² the physical object carries no independent evidentiary weight. Since it neither falls within the categories of legal evidence enumerated in Article 184 of the KUHAP nor conveys sufficient legal information to form the judge's conviction, it cannot stand alone.

Furthermore, if the evidentiary approach under the UU TPKS were to be adopted as a broader precedent, Indonesia's criminal evidentiary system could gradually shift toward an open system

²⁹ Awilda Awilda, Ismansyah Ismansyah, Aria Zurnetti, dan Henni Muchtar, "Dampak Pemeriksaan Setempat Terhadap Putusan Bebas Dalam Kasus Dugaan Tindak Pidana Cabul Dipandang Dari Aspek Kepastian Hukum Dan Keadilan," *UNES Journal of Suara Justisia* 7, no. 2 (2023): 346–368, <https://doi.org/10.31933/ujsj.v7i2.341>.

³⁰ Tristam P. Moeliono dan Widati Wulandari, "Asas Legalitas dalam Hukum Acara Pidana."

³¹ Adam Ilyas, "Praktik Penerapan Exclusionary Rules Di Indonesia," *Masalah-Masalah Hukum* 50, no. 1 (2021): 49–59, <https://doi.org/10.14710/mmh.50.1.2021.49-59>.

³² Ichsan Zikry, "Catatan atas Dikualifikasikannya Barang Bukti sebagai Alat Bukti."

(*numerus apertus*), where admissible evidence categories are no longer limited by the KUHAP but vary according to the needs of individual sectoral statutes.³³ This would carry serious implications for legal certainty and predictability in criminal law enforcement. In such a system, each sectoral law, such as sexual violence, child protection, electronic information, terrorism, corruption, or money laundering, could develop its own unique evidentiary standards, ultimately risking incoherence across the national criminal evidentiary framework.

Thus, Article 24 paragraph (1) letter c of the UU TPKS occupies an ambivalent position. On one hand, it reflects a progressive commitment to victim protection; on the other, it potentially undermines the structurally dogmatic and formal evidentiary system. Careful interpretation and application of the provision are therefore essential. Consideration must be given to whether this provision merely reaffirms the role of physical evidence in sexual violence cases or constitutes deliberate legislative innovation that necessitates systemic reform of Indonesia's criminal procedural law.

Legal Implications for the Criminal Evidentiary System

The recognition of "physical evidence" as "legal evidence" in Article 24 paragraph (1) letter c of the Sexual Violence Law (UU TPKS) constitutes a legal development that carries structural implications for Indonesia's criminal evidentiary system. Several studies have observed that evidentiary arrangements across various sectoral statutes have made notable progress but have simultaneously left unresolved the issue of harmonization between substantive and procedural criminal law.³⁴ The evidentiary framework constructed by the KUHAP since 1981 adheres to a closed model (*numerus clausus*), strictly limiting legal evidence to five categories. Any expansion beyond this framework risks disrupting uniformity and legal certainty in criminal proceedings while potentially leading to unequal treatment of defendants across different types of cases.

For illustration, one might imagine a scenario where an individual is designated a suspect solely on the basis of two pieces of physical evidence, such as a knife and a rope, without any supporting legal evidence as specified under Article 184 of the KUHAP. If physical evidence alone serves as the basis for suspect designation, absent any linkage to admissible legal evidence such as witness testimony, expert opinion, or indications, serious questions arise concerning formal legality and the protection of suspects' rights within criminal proceedings.

From the perspective of procedural legality, clarity in defining types of admissible evidence is integral to safeguarding due process of law. Inconsistent modifications that depart from general criminal procedural law risk generating a dual evidentiary system, wherein specific cases would be governed by isolated evidentiary mechanisms lacking a unified national codification. This creates uncertainty among legal practitioners and parties involved, as evidentiary standards become increasingly inconsistent and unpredictable.

Nonetheless, the current discourse surrounding criminal procedural reform through the Draft Criminal Procedure Code (RUU KUHAP) offers new avenues for viewing the provisions of the UU TPKS within a more systemic framework. The published draft of the 2025 RUU KUHAP (DPR RI 2025) explicitly includes in Article 222 paragraph (1) letter e a formulation that recognizes physical evidence as one type of legal evidence. This indicates that lawmakers have begun contemplating revisions to the previously closed evidentiary structure. In this light, the inclusion of physical evidence as legal evidence under the UU TPKS may be seen as an initial projection of Indonesia's broader criminal procedural reform.

³³ Muhammad Alvaro Syahputra dan Azmi Syahputra, "Komparasi Sistem Pembuktian Hukum Acara Pidana Antara Indonesia Dengan Republik Rakyat Cina," *Jurnal Reformasi Hukum Trisakti* 6, no. 3 (2024): 1268–1279, <https://doi.org/10.25105/refor.v6i3.21220>.

³⁴ Marfi Yosua Rafael Maramis, "Kajian atas Perkembangan Pengaturan Alat Bukti di Luar KUHAP," *Lex Crimen* 8, no. 6 (2019): 147–155.

The emergence of the RUU KUHAP, despite facing its own criticisms regarding evidentiary expansion beyond just physical evidence, becomes a relevant comparator, demonstrating that an open evidentiary system is beginning to gain legitimacy within new legislative frameworks. Should the draft be enacted, the normative legitimacy of physical evidence as legal evidence under the UU TPKS would no longer constitute an anomaly but would represent part of the evolving criminal evidentiary structure adapting to contemporary evidentiary demands.

Even so, this paradigm shift demands careful consideration. The integration of physical evidence as legal evidence requires clear elaboration on evidentiary standards, verification mechanisms, and assessment procedures that continue to uphold objectivity and safeguard defendants' fundamental rights. Reforming the evidentiary system must not abandon core principles such as the presumption of innocence and the right to a fair trial, which reflect Indonesia's commitment to international human rights standards.³⁵

Within this context, Article 24 paragraph (1) letter c of the UU TPKS may be viewed as a transitional norm, a sectoral provision that paves the way for broader systemic change. However, as long as the RUU KUHAP remains pending enactment, the application of this provision requires cautious, systemically informed interpretation. Such care is essential to prevent conflicts between special and general norms and to preserve the legitimacy of judicial decisions in sexual violence cases.

From these dynamics, it may be concluded that recognizing physical evidence as legal evidence affects not only the technical aspects of evidentiary law but also the structure and direction of national criminal procedural development. Therefore, this provision demands a consistent implementation framework, adequate judicial guidance, and firm regulatory harmonization to strengthen victim protection without distorting the established evidentiary system or the ongoing reforms reflected in the RUU KUHAP as *ius constituendum*.

Conclusion

The recognition of physical evidence as legal evidence under Article 24 paragraph (1) letter c of the Sexual Violence Law reflects a reformative impulse within Indonesia's criminal evidentiary system, particularly in addressing evidentiary challenges in sexual violence cases. While the provision expands opportunities for victims to establish proof, it simultaneously generates systemic tension with the closed evidentiary model doctrinally embedded in the KUHAP. The fundamental distinction between legal evidence and physical evidence concerns their probative validity, thus requiring careful normative integration.

Nevertheless, the emergence of similar provisions in the 2025 Draft Criminal Procedure Code indicates a shift toward a more adaptive evidentiary framework. In this transitional phase, the recognition of physical evidence as legal evidence may be viewed as an early signal of broader structural reform. Regulatory harmonization and clear judicial guidance remain essential to ensure that the expansion of evidence categories does not undermine the principle of legality or compromise defendants' rights.

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³⁵ Iftitahsari, "Mendorong Pengaturan Hak-Hak Fair Trial Khusus Bagi Orang yang Berhadapan dengan Pidana Mati dalam RKUHAP," 2022, <https://icjr.or.id/wp-content/uploads/2022/12/Mendorong-Pengaturan-Hak-Hak-Fair-Trial-Khusus-Bagi-Orang-yang-Berhadapan-dengan-Pidana-Mati-dalam-RKUHAP.pdf>.

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