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Interpreting "Other Equivalent Forms of Sexual Violence" under Article 9(g) of Indonesia's Human Rights Court Law: A Comparative Doctrinal Analysis of International Criminal Jurisprudence

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ABSTRACT

Article 9(g) of Law No. 26 of 2000 on the Human Rights Court recognizes several forms of sexual violence as crimes against humanity, including a residual category of "other equivalent forms of sexual violence," but provides no interpretive criteria. This study examines international criminal jurisprudence on the comparable residual clause of the Rome Statute to identify criteria applicable to Article 9(g) within the limits of the principle of legality. Using doctrinal legal research with statutory, case, and conceptual approaches, it analyzes ten judicial, normative, and expert sources from the ICTR, ICTY, and ICC, referring to the ICC Elements of Crimes. The findings establish five interpretive parameters: sexual nature, coercion or absence of genuine consent, comparable gravity, violation of protected legal interests, and nexus to a widespread or systematic attack. International jurisprudence is considered persuasive rather than binding authority. The study finds no documented substantive interpretation of Article 9(g) in the reviewed secondary literature, subject to verification against primary judicial documents. It proposes applying these parameters without expanding the statutory provision and recommends judicial guidelines, prosecutorial guidelines, and legislative clarification

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INTRODUCTION

Indonesia's Law No. 26 of 2000 on the Human Rights Court (Undang-Undang Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia) was enacted to establish a special judicial forum for adjudicating gross human rights violations, namely genocide and crimes against humanity, including violations that occurred before the law's enactment, most notably the violence following the 1999 Timor-Leste popular consultation. Article 9 of the Law enumerates the acts that constitute crimes against humanity when committed as part of a widespread or systematic attack directed against a civilian population. Article 9(g) lists "rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or other equivalent forms of sexual violence" (perkosaan, perbudakan seksual, pelacuran secara paksa, pemaksaan kehamilan, pemandulan atau sterilisasi secara paksa atau bentuk-bentuk kekerasan seksual lain yang setara). The first five acts are named; the last, "other equivalent forms of sexual violence," is a residual, open-textured clause that, as far as the reviewed texts show, neither the Law, its elucidation (penjelasan), nor any implementing regulation defines or explains. The core legal issue is therefore how the word "equivalent" (setara) can be given operational meaning without extending the offense beyond what the legislature enacted, that is, without breaching the principle of legality.

Article 9(g) closely follows Article 7(1)(g) of the 1998 Rome Statute of the International Criminal Court (ICC), which lists "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as a crime against humanity; Articles 8(2)(b)(xxii) and 8(2)(e)(vi) provide an analogous residual category for war crimes. The similarity is unlikely to be accidental, since the General Elucidation of Law No. 26/2000 states that its formulation of genocide and crimes against humanity refers to the Rome Statute (Republic of Indonesia, 2000). Even so, the two texts are not identical, and this study does not assume at the outset that "equivalent" (setara) and "comparable gravity" call for the same interpretive operation. That proposition is treated as a comparative premise to be tested in Sections 3.1 and 4.1. Indonesia is also not a State Party to the Rome Statute (see Triwahyuni, 2020, on non-member states), so ICC jurisprudence cannot bind Indonesian courts. Its use here rests on three grounds, examined in Section 4.1: the elucidation's reference to the Rome Statute; the principle that domestic law should, where its text permits, be interpreted consistently with international law, a question connected to monist and dualist theories on the reception of international law; and Article 38(1)(d) of the Statute of the International Court of Justice, which treats judicial decisions as a subsidiary means for determining rules of international law and therefore supports persuasive, not binding, use.

Sexual violence in armed conflict is now recognized as capable of constituting a war crime, a crime against humanity, or a constitutive act of genocide (United Nations Security Council, 2008; see also United Nations Security Council, 2000). Since 1998, ICTR, ICTY, and ICC chambers have developed the law on sexual violence, from the broad conceptual definition in *Prosecutor v. Akayesu* to the ICC's treatment of forced nudity in the *Bemba* confirmation decision and in *Prosecutor v. Katanga*. By contrast, no documented substantive interpretation of the residual clause of Article

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9(g) was identified in the sources reviewed for this study. The ad hoc Human Rights Court for Timor-Leste (2002-2003), the principal Indonesian proceeding examined here, tried eighteen defendants in cases centred on the superior responsibility of military, police, and civilian officials; the secondary literature reviewed on that proceeding, and on the Tanjung Priok and Abepura cases, does not report any charge, defense argument, or judicial finding that construed the residual clause, despite credible reports of sexual violence during the events of 1999. This is an apparent research gap and a potential practical risk, subject to verification against the primary documents of the ad hoc courts (Section 4.3), and it is a finding about the documentary record consulted, not a claim that the issue was never raised. Recent Indonesian scholarship on sexual violence in armed conflict has examined ICC jurisdiction over military leaders and command responsibility (Syabti et al., 2026); the interpretation of the residual clause of Article 9(g) itself has received less attention in the literature reviewed.

Three Indonesian instruments touch on sexual violence, but they belong to different legal regimes and should not be conflated. Article 9(g) of Law No. 26/2000 criminalizes sexual violence only as a crime against humanity, an extraordinary crime requiring a widespread or systematic attack against a civilian population. Law No. 12 of 2022 on Sexual Violence Crimes (Undang-Undang Tindak Pidana Kekerasan Seksual, UU TPKS) regulates ordinary sexual violence offenses through a more granular taxonomy of nine forms, and Law No. 1 of 2023 on the Penal Code, in force since January 2026, has modernized the general law on sexual offenses. Neither instrument amends or interprets Article 9(g). The gap has normative consequences. Under the principle of legality (Article 28I(1) of the 1945 Constitution and Article 1 of Law No. 1 of 2023), offenses must be sufficiently certain and may not be extended by analogy (Hiariej, 2016), yet the residual clause invites precisely the kind of interpretive judgment that legality constrains. Without interpretive guidelines, prosecutors and judges confronted with a new case, whether arising from historical gross violations still under investigation by the National Commission on Human Rights (Komnas HAM) or from a future atrocity, may either leave the clause unused or apply it unpredictably.

This study addresses two research questions. First, which interpretive criteria recur in international criminal jurisprudence when a tribunal decides whether an act not expressly enumerated qualifies as sexual violence of comparable gravity? Second, to what extent can those criteria serve as a persuasive interpretive aid for Article 9(g) of Law No. 26/2000 within the limits of the principle of legality? The study's central proposition is doctrinal: a five-parameter interpretive framework, derived from convergent reasoning in international jurisprudence and adapted to the Indonesian legal architecture, can operationalize the residual clause of Article 9(g) without creating a new offense, provided that it is bounded by the principle of legality. The contribution is threefold. The study reconstructs the reasoning patterns that international chambers apply to the residual category, using the ICC Elements of Crimes as the normative benchmark; it tests whether those patterns can be adopted consistently with Indonesian legality principles and the distinct legal regimes noted above; and it clarifies the limited, two-step role that UU TPKS can play as a source of candidate acts rather than as a substitute for the Article 9(g) test.

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METHODS

This study employs normative (doctrinal) legal research (penelitian hukum normatif), which examines legal norms, principles, and their systematic coherence rather than the behavior of social actors. Three complementary approaches are used, each matched to a research question. The statute approach examines the text of Article 9(g) of Law No. 26/2000 against Article 7(1)(g) and Article 8 of the Rome Statute, the ICC Elements of Crimes, and the relevant provisions of Law No. 12/2022 (UU TPKS); it establishes the normative frame for both questions. The case approach examines a purposively selected corpus of international jurisprudence in which tribunals had to characterize an act as sexual violence, including instances in which the residual or "comparable gravity" category was invoked, granted, or denied; it answers the first question. The conceptual approach draws on doctrinal scholarship on the elements of sexual violence crimes, gravity thresholds, protected legal interests (Rechtsgut), the principle of legality, and the theory of legal transplants (Watson, 1993) to organize the case-derived findings and to test their transferability; it answers the second question. The three approaches are considered adequate because the first question concerns reasoning found in decisions, whereas the second concerns whether that reasoning is compatible with an Indonesian statutory text and its constitutional limits. Coding is used solely as a device for systematizing legal reasoning and is not an empirical measurement of social behavior.

Legal materials are classified by type and weighted by authority. Primary legal materials comprise Law No. 26 of 2000 and its elucidation, Law No. 12 of 2022, Law No. 1 of 2023, and the 1945 Constitution, which bind Indonesian courts; the Rome Statute and its Elements of Crimes, which serve as the normative benchmark but do not bind Indonesia as a non-party; and the judgments and decisions of the ICTR, ICTY, and ICC, which are treated as persuasive authority. Secondary legal materials comprise peer-reviewed journal articles, expert commentaries, and civil-society instruments published between 2019 and 2026 that analyze the interpretation of sexual violence provisions in international criminal law; they are used to interpret and support legal propositions, not to establish them. Tertiary materials comprise legal dictionaries and glossaries used to clarify terminology. Expert commentary is not accorded authority equivalent to that of ICTR, ICTY, or ICC decisions.

The corpus for the case approach was constructed purposively in two groups, kept separate because their authority differs. Corpus A consists of eight judicial proceedings before the ICTR, ICTY, and ICC decided between 1998 and 2022. Corpus B consists of two normative or expert materials from international bodies, published in 2019, that address sexual violence and the comparable-gravity formulation. Together they form the ten sources (n = 10) listed in Table 1. The inclusion criterion was that a source required, or directly addressed, a determination of whether a specific act constituted sexual violence, including analysis of the "comparable gravity" or residual category. Decisions of hybrid tribunals and domestic courts were excluded to keep the corpus tractable, which is acknowledged as a limitation. This exclusion is a deliberate scope decision and not an oversight: the study tests the residual clause of the Rome Statute against the Elements of

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Crimes as a common benchmark, whereas the Special Panels for Serious Crimes in Dili (UNTAET Regulation 2000/15) and the Extraordinary Chambers in the Courts of Cambodia operate under distinct statutory instruments and hybrid institutional structures, so that their inclusion would require a separate analysis of the transferability of their reasoning. The Special Panels, which addressed the 1999 events under wording nearly identical to Article 7(1)(g), are therefore reserved as the priority comparator for follow-up research (see the Conclusions). The Rome Statute and the Elements of Crimes are used as the normative benchmark and are not counted as corpus sources. The normative basis of the term "comparable gravity" is Element 2 of the crime against humanity of sexual violence in Article 7(1)(g)-6 of the Elements of Crimes, which requires conduct of a gravity comparable to the other offenses listed in Article 7(1)(g) (International Criminal Court, 2011). The *Al-Bashir* arrest warrant decision is a preliminary decision applying a reasonable-grounds standard; it is included with lower weight, to illustrate the contextual element, and not as a source of substantive reasoning on the residual clause. Table 1 states, for each source, the doctrinal proposition drawn from it.

No.	Source	Body and year	Doctrinal proposition drawn from the source
Corpus A: Judicial decisions (persuasive authority)			
1	*Prosecutor v. Akayesu*	ICTR Trial Chamber, 1998	Defined rape as a physical invasion of a sexual nature committed under coercive circumstances, and sexual violence more broadly as an act of a sexual nature so committed, which need not involve penetration or physical contact (forced public nudity of a student was given as an example).
2	*Prosecutor v. Furundžija*	ICTY Trial Chamber, 1998	Defined the objective elements of rape by reference to coercion, force, or threat, and linked the gravity of sexual assault to its effect on personal dignity and on physical and mental integrity.
3	*Prosecutor v. Kunarac, Kovač and Vuković*	ICTY Trial Chamber, 2001; Appeals Chamber, 2002	Anchored rape in the absence of genuine, voluntary consent assessed in context, with coercive circumstances as evidence of its absence; treated sexual slavery as a form of enslavement marked by powers attaching to ownership.
4	*Prosecutor v. Katanga*	ICC Trial Chamber II, 2014	Rape and sexual slavery were found to have been committed by combatants, but the accused was not convicted of those counts because his contribution was not established; forced nudity was analyzed under the war crime of outrages

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			upon personal dignity and not as sexual violence.
5	*Prosecutor v. Bemba Gombo*	ICC Pre-Trial Chamber, 2009; Trial Chamber, 2016; Appeals Chamber, 2018	The confirmation decision declined to treat the forced undressing of male civilians as sexual violence of comparable gravity, with brief reasons. The Trial Chamber convicted for rape on the basis of command responsibility; the Appeals Chamber acquitted, addressing the standard of command responsibility.
6	*Prosecutor v. Ntaganda*	ICC Trial Chamber VI, 2019	Convicted for rape and sexual slavery, including of child soldiers within the accused's own armed group, and held that protection against these acts does not depend on the victim's group affiliation. Concerns enumerated acts, which serve as the benchmark for gravity.
7	*Prosecutor v. Ongwen*	ICC Trial Chamber IX, 2021; Appeals Chamber, 2022	Convicted for rape, sexual slavery, forced pregnancy, and forced marriage as an other inhumane act; held that forced pregnancy protects personal and reproductive autonomy and the right to family. The Appeals Chamber confirmed these findings and held that the residual category of other inhumane acts does not violate *nullum crimen sine lege*.
8	*Prosecutor v. Al-Bashir* (arrest warrant)	ICC Pre-Trial Chamber I, 2009	Preliminary decision (reasonable-grounds standard) covering rape as a crime against humanity within a widespread or systematic attack on civilians in Darfur; illustrates the contextual element (P5), not a substantive ruling on the residual clause.
Corpus B: Normative and expert materials (supporting authority only)			
9	Draft articles on crimes against humanity, with commentaries	International Law Commission, 2019	Draft Article 2 reproduces the Rome Statute formulation, including "any other form of sexual violence of comparable gravity"; the commentaries discuss it against the background of the Rome Statute and prior tribunal practice.
10	The Hague Principles on Sexual Violence	Women's Initiatives for Gender Justice (civil society),	A survivor-centered, non-exhaustive approach to what makes violence "sexual" (relevant to P1). Non-binding; used as supporting material only.

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	2019

Table 1. Corpus of International Jurisprudence and Normative Materials Analyzed (n = 10)

The analysis followed four stages. First, candidate parameters were formulated from two sources: the structure of Elements 1 to 5 of Article 7(1)(g)-6 of the Elements of Crimes (an act of a sexual nature; force, coercion, a coercive environment, or incapacity to give genuine consent; gravity comparable to the enumerated acts; and the contextual element of a widespread or systematic attack), and an initial reading of the *Akayesu*, *Furundžija*, and *Kunarac* decisions, which formed the formulation set. The parameter on protected legal interests (P4) is not a separate element in the Elements of Crimes; it was derived from the reasoning in these decisions and is anchored in the Rechtsgut theory of criminal law dogmatics (Roxin, 2006). Second, the candidate parameters were tested against the remaining sources. A parameter was recorded as engaged when a source explicitly applied or discussed the criterion in reaching or explaining its determination; a passing mention, or a mention only in a summary of the parties' submissions, was not counted. It was recorded as absent when the source was silent on it, and as not applicable when the criterion could not arise in the source's legal context (for example, an armed-conflict nexus in a decision concerned only with crimes against humanity). Third, the parameters were refined by cross-checking against the Elements of Crimes and, for the interpretation of Article 9(g), against Indonesian legality principles. Fourth, the refined parameters were synthesized into the interpretive framework presented in Section 4.

Coding was performed manually by a single researcher without inter-coder verification, and the formulation set was also part of the ten-source corpus. To provide an audit trail in the absence of a second coder, each coding decision was recorded in a coding sheet noting, for every source and parameter, the decision (engaged, absent, or not applicable) and the passage relied on, so that each entry can be traced to the text of the decision. The author then re-coded the full corpus after an interval, without reference to the first-round entries, and compared the two rounds; any divergence was re-examined against the source text and resolved by applying the engaged, absent, and not-applicable rules stated above, with the reason recorded in the sheet. These steps check the consistency of the author's own application of the protocol; they do not substitute for independent inter-coder verification. The tally for those sources therefore cannot be treated as independent confirmation; it is reported for completeness, and the analytical weight rests on the reasoning found in the remaining sources. Frequencies are used only to describe convergence in reasoning and do not demonstrate that a parameter is legally necessary. In parallel, secondary literature on the Indonesian Human Rights Courts (the ad hoc Court for Timor-Leste and, to a lesser extent, the Tanjung Priok and Abepura cases) was reviewed to determine whether the residual clause of Article 9(g) has been charged or interpreted. Where a finding rests on secondary literature and not on the judgments and indictments themselves, it is stated as such.

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RESULTS

3.1 Statutory Comparison: Article 9(g) and Article 7(1)(g)

A textual comparison shows that Article 9(g) of Law No. 26/2000 and Article 7(1)(g) of the Rome Statute share a substantially similar structure: five specifically enumerated acts (rape, sexual slavery, forced or enforced prostitution, forced pregnancy, forced or enforced sterilization) followed by an open residual category. Four differences qualify the similarity. First, the qualifiers differ: the Indonesian text uses "setara" (equivalent, equal), which may refer to the nature or character of the act as well as its severity, whereas the Rome Statute uses "of comparable gravity," which is explicitly about gravity and is supplemented by Element 2 of Article 7(1)(g)-6. Second, the Rome Statute's clause is accompanied by the Elements of Crimes and by chamber-level reasoning, while Law No. 26/2000 and its elucidation, as far as the reviewed text shows, specify no criteria for the residual category. Third, Article 9 does not appear, on its face, to contain a general clause on "other inhumane acts" comparable to Article 7(1)(k) of the Rome Statute, so conduct with a sexual dimension that does not fit an enumerated act has fewer alternative classifications in Indonesian law, which raises the stakes of the residual clause. Fourth, the jurisdiction of the Indonesian Law is limited to genocide and crimes against humanity, so the war crimes provisions of the Rome Statute have no Indonesian counterpart.

Whether "setara" and "comparable gravity" call for the same interpretive operation is therefore a doctrinal question and not a premise: can "equivalent" be interpreted through the "comparable gravity" standard without disregarding the principles of Indonesian criminal law? The elucidation's reference to the Rome Statute points toward an affirmative answer, while the textual differences and the principle of legality call for caution. The question is answered progressively, through statutory, systematic, and comparative interpretation, in Section 4.1.

3.2 Reasoning Patterns in International Jurisprudence

The coding of the ten-source corpus is summarized descriptively in Table 2. For each parameter, the discussion below follows the sequence of case, legal reasoning, proposition drawn, and implication for Indonesia. Corpus A carries the analytical weight; Corpus B is used to support the reading.

P1: Sexual nature of the act. *Akayesu* (ICTR, 1998) defined sexual violence as an act of a sexual nature committed under coercive circumstances and held that it is not limited to physical invasion or contact, using the forced public nudity of a student as an example. The proposition drawn is that the threshold question is whether the act has a sexual character, assessed in context and not by anatomy alone. The ICC has approached forced nudity less uniformly: the *Bemba* confirmation decision declined to treat the forced undressing of male civilians as sexual violence of comparable gravity, and *Katanga* analyzed forced nudity under the war crime of outrages upon personal dignity (on the narrow and the wide framing of forced nudity, see Lieber Institute at West Point, 2024). For Indonesia, P1 implies that the residual clause is not confined to penetrative acts, but that conduct does not fall within it merely because it is degrading; its sexual character

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must be demonstrated. The Hague Principles (Corpus B) offer a survivor-centered approach to what makes violence sexual, which may inform, but cannot replace, this judicial assessment.

P2: Coercive circumstances or absence of genuine consent. *Akayesu* and *Furundžija* anchored rape and sexual violence in coercion, force, or threat; *Kunarac* (ICTY, 2001 and 2002) shifted the focus to the absence of genuine, voluntary consent assessed in context, treating coercive circumstances as evidence of its absence. The Elements of Crimes reflect both strands by covering force, threat, coercion, a coercive environment, and incapacity to give genuine consent (International Criminal Court, 2011). The proposition drawn is that the wrong lies in the imposition of sexual conduct on a person who has not freely agreed to it. One of the ten sources did not engage this criterion, which is why the framework treats P2 as an ordinarily present condition whose modality varies with the facts (Section 4.1). For Indonesia, P2 links the residual clause to the concept of coercion already familiar from rape and sexual violence offenses, and it fits mass-atrocity settings in which genuine consent is unlikely.

P3: Gravity comparable to the enumerated acts. Element 2 of Article 7(1)(g)-6 requires conduct of a gravity comparable to the other offenses listed in Article 7(1)(g). In the *Bemba* confirmation decision, the Pre-Trial Chamber held that the alleged forced undressing did not meet that threshold, although its reasons were brief; the decision shows that the gravity comparison is a separate operative test that the mere presence of a sexual element does not satisfy. *Kunarac* offers a positive illustration in its treatment of sexual slavery as a form of enslavement marked by the exercise of powers attaching to ownership, which shows how severity can be derived from the way control is exercised over a person. The ICTR and ICTY decisions did not apply a comparable-gravity clause; P3 was coded for them where the chamber assessed the seriousness of the act for its legal characterization, for example under torture, enslavement, or outrages upon personal dignity. The proposition drawn is that gravity is assessed against the enumerated acts, which serve as the benchmark, and takes account of the nature of the act and its effects on the victim. For Indonesia, P3 gives content to "setara": the benchmark is the set of five enumerated acts in Article 9(g), and the assessment must be reasoned, not assumed.

P4: Violation of a protected legal interest. *Furundžija* linked the gravity of sexual assault to its effect on personal dignity and on physical and mental integrity, and *Ongwen* held, at trial and on appeal, that forced pregnancy protects personal and reproductive autonomy and the right to family. The proposition drawn is that the residual clause protects identifiable interests, namely bodily integrity, sexual autonomy, reproductive autonomy, and dignity, and that identifying the interest helps to delimit what is "equivalent" to the enumerated acts. This parameter is not new: it corresponds to the Rechtsgut theory, under which criminal provisions are read in the light of the legal interest they protect (Roxin, 2006). P4 is therefore treated as a bridge to Indonesian doctrine and as a question closely related to P3, and it is not offered as a discovery of the coding. For Indonesia, P4 supplies a familiar interpretive tool for testing candidate acts.

P5: Contextual element. The crime against humanity of sexual violence requires that the act be committed as part of a widespread or systematic attack directed against a civilian

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population, with knowledge of the attack (Elements 4 and 5 of Article 7(1)(g)-6); war crimes require a nexus with an armed conflict. These are distinct legal regimes, and P5 is therefore recorded with two limbs, of which only the relevant one applies in each source. *Kunarac* applied the crimes against humanity chapeau to sexual crimes committed against the Muslim civilian population in the Foča area, and the *Al-Bashir* warrant decision illustrates the same contextual analysis at a preliminary stage in Darfur. The proposition drawn is that the contextual element is what distinguishes the residual clause from an ordinary sexual offense (Cassese, 2008). For Indonesia, only the crimes against humanity limb is relevant, because Law No. 26/2000 does not cover war crimes; the armed-conflict limb is dropped when the framework is adapted.

Parameter	Operational question	Principal anchor	Sources engaging the criterion (of 10)
P1	Does the act have an identifiable sexual character?	Element 1, Art. 7(1)(g)-6; *Akayesu*	10
P2	Was the act imposed by force, threat, coercion, or a coercive environment, or on a person unable to give genuine consent?	Element 1; *Furundžija*; *Kunarac*	9
P3	Is the gravity of the act comparable to that of the enumerated acts?	Element 2; *Bemba* (confirmation); *Kunarac*	10
P4	Which protected legal interest does the act violate (bodily integrity, sexual or reproductive autonomy, dignity)?	*Furundžija*; *Ongwen*; Rechtsgut theory	10
P5	Was the act part of a widespread or systematic attack on civilians (crimes against humanity), or linked to an armed conflict (war crimes)?	Elements 4 and 5; *Kunarac*; *Al-Bashir*	10 (relevant limb only)

Table 2. Descriptive Tally of Interpretive Parameters across the Ten-Source Corpus (n = 10)

Table 2 shows that sexual nature (P1), gravity (P3), protected interest (P4), and the contextual element (P5) were coded as engaged in all ten sources, and coercion or absence of consent (P2) in nine. These figures describe how consistently the reasoning recurs. They do not prove that a parameter is legally obligatory; they are affected by the overlap between the formulation set and the corpus (Section 2.4); and, because the corpus is purposive, they cannot be generalized to all international jurisprudence. The finding is therefore expressed as strong doctrinal convergence on a recurrent pattern of reasoning and not as a statistical result.

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3.3 Article 9(g) in Indonesian Human Rights Court Practice

The Indonesian component of this study is confined to the Human Rights Court proceedings for which secondary literature was reviewed, principally the ad hoc Human Rights Court for Timor-Leste (2002-2003) and, to a lesser extent, the Tanjung Priok and Abepura cases. The Timor-Leste court was established under Presidential Decree No. 53 of 2001, as amended by Presidential Decree No. 96 of 2001, and sat in Jakarta. It tried eighteen defendants, including military, police, and civilian officials, for gross violations connected with the violence that followed the August 1999 popular consultation, with charges structured predominantly around superior responsibility under Article 42 of Law No. 26/2000. All eighteen defendants were ultimately acquitted through appeal, cassation, or judicial review; the last acquittal, that of Eurico Guterres, was pronounced by the Supreme Court on judicial review in 2008 (Hukumonline, 2006; Mahkamah Agung Republik Indonesia, n.d.). The secondary literature reviewed does not report any instance in which a defendant was charged under, or a chamber substantively construed, the residual clause of Article 9(g), notwithstanding contemporaneous reports of sexual violence during the same events. Table 3 summarizes the comparison.

Dimension	International jurisprudence (ICTR/ICTY/ICC)	Indonesian Human Rights Courts (as reflected in the reviewed literature)
Period of practice	1998-2022 (continuing)	2002-2003 (Timor-Leste); other proceedings consulted
Decisions addressing the sexual violence category or the comparable-gravity threshold	Several (for example *Akayesu*, *Kunarac*, and the *Bemba* confirmation decision); ICC practice on the residual clause itself remains limited	No documented substantive interpretation of Article 9(g)'s residual clause identified
Interpretive guidance available to judges	Elements of Crimes; chamber jurisprudence	None identified: no implementing regulation, and the elucidation is silent on the residual clause
Basis of the comparison	Judgments and decisions (Table 1)	Secondary literature; indictments, judgments, and case files not yet audited

Table 3. Comparative Summary: International Jurisprudential Practice and Indonesian Human Rights Court Practice

This finding should be read with appropriate caution. It reflects the published secondary literature reviewed for this study and not an audit of indictments (surat dakwaan), judgments, and archival case files, and it is possible that evidence of sexual violence was raised in the proceedings without being reflected in the reviewed commentaries. The claim is accordingly limited: no documented substantive interpretation of the residual clause of Article 9(g) was found in the sources reviewed, which indicates a probable interpretive gap that the framework presented in

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Section 4 is intended to help address. Verification against the primary documents of the ad hoc courts is a necessary next step (Section 4.3).

DISCUSSION

The results indicate that international chambers do not treat the "comparable gravity" residual category as a low or purely subjective threshold. The reasoning recurs in a five-part structure, which this study formulates as an interpretive framework. The parameters do not all have the same status, and "cumulative" is not used as a proven claim. P1, P3, P4, and P5 function as threshold questions: each was engaged in every source and, except P4, each corresponds to an element in the Elements of Crimes, so an act that fails any of them is not brought within the residual clause. P2 is treated as ordinarily present but modality-sensitive: it corresponds to the coercion or consent element in the Elements of Crimes, but it was engaged in nine of ten sources and, in mass-atrocity settings, may be satisfied through different modalities, such as force, threat, a coercive environment, or incapacity to consent. This structure is a doctrinal choice of the study; it is supported by, but not proven by, the tally in Table 2.

Three grounds support using the framework as a persuasive aid for Article 9(g). First, the elucidation of Law No. 26/2000 refers to the Rome Statute, which supports reading Article 9 in harmony with Article 7 of the Statute where the Indonesian text permits. Second, under the principle that domestic law should be interpreted consistently with international law, and whichever position is taken between monist and dualist theories, a court may consult international materials as an aid to interpretation without treating them as a source of binding norms. Third, Article 38(1)(d) of the Statute of the International Court of Justice treats judicial decisions as a subsidiary means for determining rules of international law; it does not make ICC jurisprudence a source of Indonesian criminal law. These grounds justify persuasive use only. Because Indonesia is not a party to the Rome Statute and ICC decisions do not bind its courts, the framework must be justified in Indonesian terms, namely through systematic interpretation (penafsiran sistematis) of Article 9(g) within Law No. 26/2000 as a whole.

Because the residual clause is where judicial creativity is most likely, the framework ends with an explicit legality check. It must not create new offenses; it may only operationalize the residual clause that the legislature enacted. Four limits follow. First, certainty (lex certa): the conclusion must be reasoned from the text "bentuk-bentuk kekerasan seksual lain yang setara," so the conduct must be capable of being described as sexual violence in its ordinary legal meaning and be equivalent to the enumerated acts under P1 to P4. Second, the prohibition of analogy that broadens offenses (lex stricta): Article 1 of Law No. 1 of 2023 prohibits analogy in determining criminal offenses, so the framework structures interpretation and does not authorize extending the clause to conduct that is merely similar to the enumerated acts. Third, non-retroactivity (lex praevia): Article 43 of Law No. 26/2000 allows ad hoc courts to hear violations that occurred before the Law was enacted, which makes the guarantee against retroactive prosecution in Article 28I(1) of the 1945 Constitution especially sensitive. For such events, later international decisions such as

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Ongwen (2021) may inform the reading of the text but cannot widen liability in ways that were not reasonably foreseeable when the acts occurred, whereas earlier reasoning such as *Akayesu*, *Furundžija*, and *Kunarac* stands on firmer ground. Fourth, the ICC Appeals Chamber in *Ongwen* held that the residual category of other inhumane acts under Article 7(1)(k), a structurally comparable clause, does not violate *nullum crimen sine lege*, which lends support to the view that a residual clause can be applied consistently with legality when its limits are articulated, although that holding concerns a different provision and a different legal order.

Figure 1 presents the framework as a decision flow, and Table 4 gives an operational question for each step with illustrations from the jurisprudence discussed above. The illustrations show how the question has been answered in international practice; they are not Indonesian precedents.

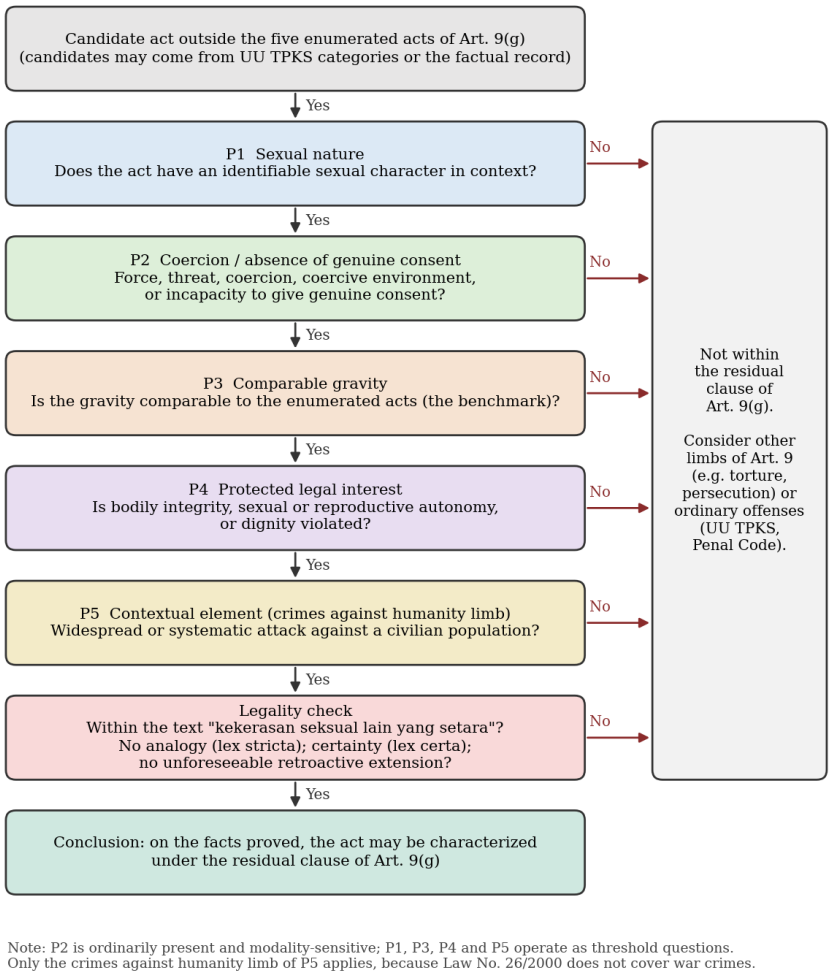


Figure 1. Proposed Five-Parameter Interpretive Framework for "Other Equivalent Forms of Sexual Violence" under Article 9(g) of Law No. 26/2000, with Legality Check

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Step	Operational question	Illustration: criterion met	Illustration: criterion not met or contested
P1	Does the act have an identifiable sexual character in context?	*Akayesu*: forced public nudity of a student treated as sexual violence	*Katanga*: forced nudity analyzed as an outrage upon personal dignity; *Bemba* confirmation decision: forced undressing not treated as sexual violence of comparable gravity
P2	Was the act imposed by force, threat, coercion, or a coercive environment, or on a person unable to give genuine consent?	*Kunarac*: sexual acts against women and girls held in Foča detention facilities, in coercive circumstances	Limit stated in *Kunarac*: consent given voluntarily and freely, assessed in context, takes the act outside the concept
P3	Is the gravity comparable to the enumerated acts, which serve as the benchmark?	*Kunarac*: sexual slavery as the exercise of powers attaching to ownership	*Bemba* confirmation decision: threshold not met for the alleged forced undressing
P4	Which protected legal interest is violated (bodily integrity, sexual or reproductive autonomy, dignity)?	*Ongwen*: forced pregnancy protects personal and reproductive autonomy and the right to family; *Furundžija*: dignity and integrity	Conduct offending dignity but engaging no sexual or reproductive interest is classified elsewhere (*Katanga*: outrages upon personal dignity)
P5	Was the act part of a widespread or systematic attack against a civilian population (crimes against humanity limb only)?	*Kunarac*: attack against the Muslim civilian population in the Foča area	Illustrative: an isolated act unconnected to any attack is an ordinary offense (for example under UU TPKS), not a crime against humanity
Legality check	Is the conclusion within the text "bentuk-bentuk kekerasan seksual lain yang setara," without analogy or	*Ongwen* (Appeals): a residual clause held compatible with *nullum crimen sine lege* where its standards are articulated (a different provision)	Illustrative: an act merely similar to, but not equivalent in nature and gravity to, the enumerated acts falls outside the clause (lex stricta)

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	unforeseeable retroactive extension?

Table 4. Operationalization of the Framework: Questions and Illustrations from International Jurisprudence

Applied illustratively, the framework can be used to test conduct outside the five enumerated acts, such as forced contraception, sexual mutilation, or forced marriage in a conflict setting. Forced contraception may raise P1 (a reproductive dimension of sexual autonomy) and P4 (reproductive autonomy) and, depending on scale and severity, P3. Forced marriage is contested at P1 and P3, because the ICC classified it in *Ongwen* as an other inhumane act and not as sexual violence, and Article 9 of Law No. 26/2000 has no general clause for other inhumane acts. These outcomes are not conclusions: each depends on the facts and on the legality check, and where the legislature has not enacted an offense the framework cannot supply it.

The relationship between UU TPKS and Article 9(g) operates in two steps. In the first step, UU TPKS serves as a domestic source for identifying candidate acts. Article 4(1) of the Law recognizes nine forms of sexual violence: non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. This taxonomy is more granular than anything in Law No. 26/2000. In the second step, the P1 to P5 framework, together with the legality check, functions as the test that determines whether a candidate act satisfies Article 9(g). The UU TPKS categories cannot be imported wholesale into Article 9(g), because ordinary sexual violence offenses and crimes against humanity belong to different legal regimes with different gravity and contextual requirements (P3 and P5). The presence of an act in UU TPKS neither establishes nor excludes its qualification under Article 9(g): an act qualifies only if it is committed as part of a widespread or systematic attack against a civilian population and satisfies the other parameters. The same reasoning applies to the ordinary sexual offenses of the new Penal Code. In this way, the framework links Indonesia's now-detailed ordinary criminal law on sexual violence with its comparatively undeveloped extraordinary-crimes provisions without equating the two.

The apparent absence, in the sources reviewed, of documented interpretation of Article 9(g) also carries implications beyond the doctrinal question. Definitional ambiguity is one of several difficulties commonly associated with prosecutions before the Human Rights Courts, alongside evidentiary and jurisdictional problems. The undefined residual clause may create an incentive or risk of prosecutorial underreach, since prosecutors lacking interpretive guidance may charge only the enumerated acts, or omit sexual violence charges, rather than risk an unprecedented interpretation before an unfamiliar bench. This is a possible implication and not a finding of causality, because the study does not examine prosecutorial behavior directly.

The transfer of interpretive criteria from international criminal law to Indonesian law also faces the limits identified in the theory of legal transplants (Watson, 1993). A transplant is more likely to succeed when the receiving system is compatible with the system from which the norm is taken. International criminal tribunals operate in a predominantly adversarial procedure, whereas Indonesian criminal procedure is a mixed inquisitorial and adversarial system in which proof is

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governed by Article 183 of the Criminal Procedure Code (Law No. 8 of 1981) and the judge's conviction. The framework transfers interpretive questions about the elements of the offense, not procedural or evidentiary standards, which is why it is presented as a persuasive aid within Indonesian systematic interpretation and not as a wholesale import.

Several limitations qualify the conclusions. First, international jurisprudence is persuasive and not binding for Indonesia, and the corpus is purposive and small: it does not survey all ICTR, ICTY, ICC, and hybrid tribunal jurisprudence, and a larger corpus with systematic sampling could refine the pattern reported in Table 2. International practice on the residual clause itself is also thinner than its practice on sexual violence generally, so the framework rests partly on reasoning about the enumerated acts. The deliberate exclusion of hybrid tribunals, notably the Special Panels for Serious Crimes in Dili, which addressed the 1999 events (Section 2.3), also means that the framework has not been tested against the forum closest to those events. Second, coding was carried out by a single researcher, the formulation set overlaps with the corpus, and no inter-coder check was made; a second coder and a separate testing corpus would strengthen reliability. Third, because the formulation set forms part of the ten-source corpus and no independent testing corpus was used, the convergence reported in Table 2 (nine or ten of ten sources, or 90 to 100 percent) reflects only the internal consistency of the author's own coding. It is not evidence of the external validity of parameters P1 to P5 and cannot be treated as independent confirmation of them; only application to a separate, independently coded corpus could test that. Fourth, the assessment of Indonesian practice relies on secondary literature and not on an audit of indictments, judgments, and case files, and it should be verified against the primary documents of the ad hoc courts, including case numbers, defendants, charges, and holdings, before it is treated as an established finding. Fifth, doctrinal research can identify and structure interpretive criteria but cannot itself resolve their application to a specific future case, which depends on the facts before the court.

CONCLUSIONS

This study asked which interpretive criteria recur in international criminal jurisprudence on comparable residual clauses for sexual violence, and to what extent they can serve as a persuasive aid for interpreting Article 9(g) of Law No. 26 of 2000 within the limits of legality. On the first question, the analysis of a ten-source purposive corpus shows strong doctrinal convergence on five parameters: the sexual nature of the act, coercive circumstances or absence of genuine consent, gravity comparable to the enumerated acts, violation of a protected legal interest, and a contextual nexus to a widespread or systematic attack (or, for war crimes, to an armed conflict). The convergence describes a recurrent pattern of reasoning; it does not prove that each parameter is legally obligatory. On the second question, the parameters can operate as a structured interpretive aid for Article 9(g) if they are applied to the text enacted by the legislature, screened by an explicit legality check, and combined with UU TPKS only as a source of candidate acts. As to Indonesian practice, no documented substantive interpretation of the residual clause was found in

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the sources reviewed, which suggests that, within the limits of those sources, the clause may have remained doctrinally untested; this finding requires verification against primary judgments.

The main contribution of the study is an interpretive framework, adapted to the Indonesian legal architecture and limited by the principle of legality, for the residual clause of a crimes against humanity provision that has not been judicially elaborated. The recommendations that follow are normative proposals and not research findings. Because the available pathways differ in authority and effect, they should be kept distinct. First, judicial guidelines could be issued through a Supreme Court regulation (Peraturan Mahkamah Agung), on the basis of the Court's power to regulate matters needed for the smooth administration of justice where the law is incomplete (Law No. 14 of 1985 on the Supreme Court, as amended); such a regulation can guide interpretation but cannot create or extend offenses. Second, internal prosecutorial guidelines for gross human rights cases could be issued by the Attorney General under the Prosecution Service Law (Law No. 11 of 2021); they bind prosecutors and not the courts. Third, legislative clarification by the House of Representatives (DPR), through an amendment of Law No. 26/2000 or its elucidation, is the only pathway that can settle the text itself and the one most consistent with certainty; it would operate prospectively. The first two pathways are interim measures whose authority must be justified separately, and neither has a binding effect equivalent to statute.

Future research should test the framework against hypothetical cases and against other forums that have applied similar residual clauses, and should verify the domestic finding through direct review of the indictments and judgments of the ad hoc courts. Useful comparators include the Special Panels for Serious Crimes in Dili, which prosecuted the 1999 events under UNTAET Regulation 2000/15 with wording nearly identical to Article 7(1)(g) of the Rome Statute; the Extraordinary Chambers in the Courts of Cambodia, which adjudicated forced marriage as a crime against humanity; and national precedents and legislation such as the Sepur Zarco case in Guatemala (2016) and Republic Act No. 9851 in the Philippines. These comparators were deliberately left outside the present corpus for the reasons given in Section 2.3, and the Special Panels in particular merit a dedicated comparative study.

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