



Online Gender Based Violence Against Women

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Abstract

This study aims to analyze the regulation of online gender based violence against women in Indonesia criminal regulations. This research use the normative methods. Accumulation method used by the author in this research is literature study. With a research approach that prioritizes legal materials in the form of legislation as a basic reference material in conducting research. As well as a conceptual approach used to understand concepts related to normalization in a legislation whether on accordance with the spirit contained in the underlying legal concepted. The research's result shown that the regulation of online gender based violence against women in Indonesia criminal law could be concluded as follow: first, Law Number 1 of 1946 on Criminal Regulations. Second, Law Number 19 of 2016 on amendment to Law Number 11 of 2008 on Information and Electronic Transaction. Third, Law Number 44 of 2008 on Pornography, and last Law Number 12 of 2022 on Crime of Sexual Violence.

Keywords: *Gender, Online, Violence against women*

Introduction

The form of the Unitary State of the Republic of Indonesia has a goal, namely to protect the entire Indonesian nation. This goal is perceived as inclusive protection for all citizens, including women. The objectives set out in the Preamble to the 1945 Constitution of the Republic of Indonesia are described in the articles in the body of the constitution. There are fourteen divisions of constitutional rights consisting of first, the right to citizenship; second, the right to life; third, the right to self-development; fourth, the right to freedom of thought and freedom of choice; fifth, the right to information; sixth, the right to work and a decent living; seventh, property and housing; eighth, the right to health and healthy environment; ninth, family rights; tenth, the right to legal certainty and justice; eleventh, the right to be free from threats, discrimination, and violence; twelfth, the right to protection; thirteenth, the right to fight for rights; fourteenth, the right to government. (Komnas Perempuan, 2014)

During the New Order era, there were several non-governmental organizations that provided assistance to women victims of violence (Kristi Poerwandari, 2002). However, the fact that violence against women is still a concern for a small part of the community means that it has not become a concern for the wider community. Public awareness of this started from several riots that occurred by expressing various forms of sexual violence against women. (Komnas Perempuan, 2013)

The outline of violence is coercion so that whatever the activity, whoever does it as long as the activity contains coercion means that it is an act of violence. Not everyone can feel the same impact after facing violence. The level of tolerance and ways of surviving violence for each person will be different. Physical or psychological wounds from victims will be engraved differently in each person. Not only physically, sexual violence can also occur in the online realm and is vulnerable to be experienced by teenagers aged over 18 years, most of whom are active users of social media.

In fact, due to the complex social order such as socio-religious morals, cultural perspectives, economic background, ideology, and supporting legal systems, gender-based violence occurs based on patriarchal principles so that men become violators of violence and women become victims of various verbal abuses, physical violence, to violations of women's basic rights. Thus, the Convention on the Elimination of Discrimination against Women was established as an international instrument for the protection of women's rights so that violence, intimidation and fear become an obstacle for women to actively participate in society.

The term gender-based violence is violence that is specifically experienced by women due to unequal gender relations so that it occurs more often to women and girls than to men and boys. But it does not rule out it can happen to men. Violence in question is in the form of acts based on gender differences that result in physical, coercion, including threats of such acts, psychological harm or sexual, arbitrary deprivation of liberty, suffering to women, whether occurring in the public sphere or in life personal (Deklarasi PKTP, 1995). The element of coercion can be carried out openly by one person or several groups. Based on the type, violence is divided into economic, emotional, physical, psychological or sexual and neglect. Gender-based violence definitely attacks a person's body, not physically, but in its entirety. For example, sexual identity, different reproductive health, expression and gender identity, the existence of beauty standards that are not inclusive, some examples are Korean arrow athletes accused of being anti-feminist for having short hair, toxic femininity situations where women must have long hair, white skin, and so on, or men should not cry and must have a loud voice. However, compared to other forms of violence, sexual violence has the greatest impact on the victim but is the most difficult to prove.

This violence occurs both in the public sphere as well as domestic. In the public domain in the form of public places, workplaces, and residential areas. Meanwhile, violence in the domestic sphere includes within the household, family and personal relationships. Sexual violence is part of both directly, gender-based violence and facilitated by digital technology.

The term "gender violence" is often used

synonymously with "violence against women". The term "gender violence" highlights the gender dimension in these forms of action in the form of sexual, physical, psychological, traditional practices, gender-based socio-economic violence, even when it occurs in online or cyberspace or in other terms occurs because women's status becomes second class in the world. Community and are vulnerable to violence. This occurs as a result of social construction that places the position of certain sexes more dominant in society over other deprivation of liberty, sexual harm, mental, coercion, resulting in actions that result in physical and including threats (Achie Sudiarta et al, 2007).

Gender-based violence is a more inclusive form of violence against women, but gender-based violence can attack anyone other than women, afflicting people based on their gender expression and identity, due to unequal gender relations in society (Friend of UNFPA, 2020). So gender based violence can also occur not only against women, but also people with different gender expressions. However, it should be underlined that gender based violence is not always about sexual violence, it can also be in the form of slavery, surveillance, and others but is dominated by various forms of sexual violence.

Gender based violence manifests in various forms of interconnected and repeated series of private to public including those mediated by technology as well as today that transcend national boundaries. This is the basis for the concept of online gender-based violence. When all forms of gender-based violence are facilitated by digital technology such as internet and cellular networks, hardware such as mobile phones to hard disks or flash disks, or various digital platforms such as email, social media accounts, to other entertainment applications, digital technology features such as algorithms, as well as digital formatted data, it is part of Online Gender Based Violence which is facilitated by technology, the same as the real world, the act of violence must have the intention or intent to harass the victim based on gender or sexuality (Ellen kusuma et al, 2020).

Gender based violence online means not only when connected to the internet, but when gender based violence is facilitated by digital technology. In this case, digital technology is divided into two, namely hardware in the form of cellphones, laptops, flash drives, hard drives, and others. And software consists of various apps

such as social media, chat apps, dating apps, gaming, and others.

Based on the National Commission for Women, there are eight forms of online gender-based violence, hacking, invasion of privacy, namely approaches to deception, online harassment, defamation, illegal content, threats of distribution of personal videos or photos, cyber recruitment. Some examples of hacking cases can be seen in the case of Imelda Sari (Yuslianson, 2019). In this case, the perpetrator used the victim's whatsapp number to send indecent messages and pictures to the victim's team's whatsapp group. After the victim found out about this, and reported it to the Directorate of Cyber Crime, it turned out that the whatsapp account was hijacked by someone else. The next case, which is a form of approach to deceiving, can be seen from the case of a man who created Facebook and Instagram accounts using photos and was a widower and was looking for a wife to get the victim's attention. After getting an interested victim, the perpetrator pretended to be in a romantic relationship and exchanged phone numbers until finally with seduction, the victim was invited to make a video call and asked not to wear clothes and without being noticed, the perpetrator recorded the video. So the footage is used to threaten and blackmail the victim with threats to spread the video if his request is not fulfilled (Arya Prakasa, 2018).

Genderbased violence against women online to date has many forms and is still growing along with technological developments (Rizka Antika, 2020). So it is necessary to know that with the many forms of online genderbased violence against women, the legal framework response is not only from the legal regulation sector but also from the prevention sector and the case handling sector, not all of which can be recommended as criminal provisions. So that there are six forms of groups that can be introduced in criminal law instruments, namely online stalking, online harassment, dissemination of intimate content without consent, modifying data or communications without permission, accessing data or communications without permission, and Information and Communication Technology only as a medium.

Based on the annual records of the 2020 national women's commission, the number of complaints of cases of online genderbased violence against women in 2019 increased by 300% from the previous year. So you can

imagine the many cases of online violence that occurred during the pandemic when almost all activities moved online, namely a change towards digital so that the phenomenon of online genderbased violence emerged in Indonesian society, with the number of violence increasing sharply due to the pandemic (Dwi Putri, 2020). In the last 12 years, violence against women has increased by 792%. Online genderbased violence cases are the second highest after domestic violence with 418 cases, while online genderbased violence has 307 reports (Haryanti Puspa, 2021).

The national commission for women recorded (Dyta Caturani, 2020) cases of online gender-based violence, during 2017 there were 16 cases, in 2018 it increased to 97 cases, in 2019 it became 281 cases and in 2020 there were 659 cases of online genderbased violence. This means that in the period 2017 to 2020 there will be an increase of more than 900%. The data is what was reported, so it is believed to be an iceberg phenomenon from the actual situation, that is, the figure is certainly much higher than the reported figure. Thus, the increasing number of cases that occur proves that legal protection is still weak.

The Indonesian legal framework in overcoming various forms and types of online genderbased violence against women applies several legal provisions used in regulating genderbased online violence against women, including the Criminal Code which is only limited to elements and punishments for rape and obscenity, Law No. Law Number 11 Year 2008 jo. Law Number 19 of 2016 concerning Information and Electronic Transactions still has many shortcomings because it does not have a gender perspective (Jihan Risya, 2021), and Law Number 44 of 2008 concerning Pornography that has been made has not been able to protect the rights of the existing victims of online genderbased violence against women. this rule is not in the context of protection. This is an act of victim blaming which is very dangerous for the victim's side. If we look further at the impact of this, it is very dangerous for victims of online genderbased violence against women. They will be reluctant and will feel even more afraid to report the crimes they experience because it will be a boomerang for them.

Meanwhile, in the protection of victims of this violence, the majority are women, they should receive special protection as part of law enforcement. However, Indonesia has just passed Law Number 12 of 2022 concerning the Crime of

Sexual Violence on April 12, 2022, in which there are forms that can be categorized as online genderbased violence against women, which are expected to be implemented in favor of the victim.

So the author intends to study online genderbased violence against women. The discussion will focus on How is the regulation of online genderbased violence against women in criminal legislation in Indonesia?

Materials and Method

The research that will be carried out in this thesis is to use a normative research study focus which is understood as research to test a prevailing norm or provision and is carried out by examining library materials or secondary data (Irwansyah, 2020).

Based on the problem formulation, the approach method used in this research is a statutory approach and a conceptual approach in order to obtain a systematic and complex description of all types of legal materials with a qualitative analysis process.

Results and Discussion

Regulation of Gender-Based Online Violence Against Women in Indonesian Criminal Law

Law is a system of norms which is a statement that emphasizes the "should" or *das sollen* aspect, using several rules regarding what must be done. Norms are laws that contain rules as guidelines for individuals to behave in society. These rules serve as limits that will burden each individual's actions. The implementation of these regulations creates legal certainty (Peter Mahmud, 2008). So according to P. Borst, law is a rule or norm, namely a guide or guide to life that must be obeyed by humans. And according to Paul Scholten the law is an indication of what is appropriate and what is not appropriate to do, so the law is an order (Achmad Ali, 2009).

One of the toughest challenges in dealing with online gender-based violence is the issue of jurisdiction. This challenge stems from the decentralized and cross border characteristics of the internet, so that the transmission of information across jurisdictions. Apart from the criticism that the legal handling is not always neutral, the scope and perspective on online gender-based violence in each country will be different and integrated cooperation between countries in handling cases of online gender-based violence

also does not exist until now. What this means for cybercrimes is that a defendant can certainly be subject to criminal sanctions in almost any jurisdiction where there is an internet connection. The defendant started the crime from a certain place and the victim is in a certain place so that the challenge is to identify that location. Even if the connection is short, the computer is physically located in a certain place (Maskun, 2013).

Indonesia in its regulation of handling cases of online genderbased violence women currently refers to several regulations, namely Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Law Number 44 of 2008 concerning Pornography. However, the three regulations actually do not specifically provide guarantees of protection for victims because their formulations are very general with limited elements. Then Law No. 12 of 2022 was born which provides an overview of the regulations regarding online genderbased violence women.

1. Law Number 1 of 1946 concerning Criminal Law Regulations

There are three forms of crimes related to sexuality, namely decency (Pasal 282 ayat (1) dan (2) KUHP), sexual intercourse (Pasal 284, Pasal 285, dan Pasal 286 KUHP), and obscenity (Pasal 289, Pasal 290 ayat (1),), Pasal 290 ayat (2) dan (3), Pasal 292, Pasal 293, Pasal 294 ayat (1) dan (2) KUHP). Morality is intended as a form of violation of the norm of decency which is often gender biased, because obscene acts are defined as a violation of decency or a heinous act that is included in the scope of lust. The Criminal Code does not explicitly regulate cases of online genderbased violence against women, but the Criminal Code can be applied to criminal acts related to genderbased online violence against women by referring to several provisions regarding crimes that have been regulated in it, namely as follows:

a. Article 335 of the Criminal Code

Whoever unlawfully forces another person to do, not to do or to allow something, either against the person himself or another person by using violence or by using threats of violence.

Regulate the punishment of perpetrators with violence or threats of violence so that people do or not do something. The focus of online stalking is the act of limiting the victim's independence. In terms of legal construction, the Criminal Code does not limit that it must be in a physical condition so that it can be applied and

there is no progressive perspective to be able to use the provisions in the Criminal Code for actions in the cyber realm.

b. Article 315 of the Criminal Code, Article 281 number 2, Article 289 of the Criminal Code

Violence Against Women Based on Gender Online which can be punished in Article 315, Article 281 number 2, and Article 289 of the Criminal Code in the form of online harassment.

a) Article 315 of the Criminal Code

Every intentional insult that is not insulting or blasphemous in writing, which is done to a person, either in a public place orally or in writing, or in front of the person himself, verbally or by deed, as well as in writing sent or received to him, shall be punished. for light insult, with a maximum imprisonment of four months and two weeks or a fine of four thousand five hundred rupiah.

Article 315 of the Criminal Code concerning insults without accusation (mild insults) is used to process harassment, including online harassment with a spectrum of acts of harassment up to providing unwanted moral content. For example, sending intimate images to unwanted people.

Another behavior that can be classified as insulting under Article 315 of the Criminal Code is saying harsh words to someone. The meaning of "insulted" or humiliation is accommodated by this act, so it is important to look at the context of insults regulated in criminal law in Indonesia. In the "Explanation of the Criminal Code (KUHP) (R.Soesilo, 1995) ", that "insulting" is an act of attacking a person's honor and good name. The attacked party then felt ashamed. The honor that is attacked here is about the honor of "good name". At the same time, Article 315 of the Criminal Code prohibits any form of insult that is not defamatory or does not accuse something, can occur in public orally or in writing, or in front of the person himself by word of mouth or deed, or by a letter sent to him.

b) Article 281 number 2 of the Criminal Code

Whoever deliberately destroys public decency of another person, who is present not of his own volition.

The provisions of Article 281 number 2 of the Criminal Code are related to violating decency in front of people, in which the person does not give his consent. In this case, the Crimi-

nal Code provides a little description of the existence of consent (Ibid). The word "decency" (zeden, eerbaarheid) is a feeling of shame that is related to sexual desire, for example having sex, touching a woman's chest, touching a woman's genitals, showing female and male genitalia, kissing and so on.

c) Article 289 of the Criminal Code

Any person who by force or threat of violence compels a person to commit or allow an obscene act to be carried out on him, shall be punished for violating decency with a maximum imprisonment of nine years.

The provisions in Article 289 of the Criminal Code stipulate sexual harassment if it has entered into an obscene act. Obscene acts are defined (Ibid) as all acts that violate decency (politeness) or vile acts, all of which are within the limits of sexual desire, for example: kissing, touching the genitals, touching the breasts, and so on related to sexuality. If online harassment causes obscene acts by the victim, then the act fulfills the element of "allowing obscene acts to be carried out".

c. Article 368 of the Criminal Code and 369 of the Criminal Code

Violence Against Women Based on Gender Online which can be punished in Articles 368 and 369 of the Criminal Code in the form of sextortion/sexual blackmail for material purposes.

a) Article 368 of the Criminal Code

1) *Whoever with the intention of benefiting himself or another person by violating his rights, forces a person with violence or threats of violence, so that that person gives goods, which wholly or partly belongs to that person belongs to another person or so that that person makes a debt or writes off receivables, convicted of extortion with a maximum imprisonment of nine years.*

2) *The provisions in the second, third and fourth paragraphs of Article 365 apply to that crime.*

b) Article 369 of the Criminal Code

1) *Whoever, with the intention of benefiting himself or another person by violating his rights, forces a person with the threat of verbally insulting them or verbally insulting them in writing or with the threat of revealing a secret, so that that person gives something, which wholly or partly belongs to that person. own or belonging to another person, or for that person to make a debt or write*

off a debt, is punishable by a maximum imprisonment of four years.

- 2) *This crime is only prosecuted upon the complaint of the person charged with the crime.*

In this case, the victim of Sextortion or sexual extortion with material purposes can report the perpetrator with the element of "self-benefit". In these circumstances, the threat made is related to a materially measurable gain, for example goods, payables or receivables.

If the purpose of sexual extortion is to obtain something that cannot be materially measured, for example gaining access to sexual incentives or forcing the victim to have sexual intercourse, then it will be related to doing or not doing something.

The Criminal Code does not explicitly regulate acts of Gender-Based Violence Against Women Online, but the Criminal Code can be applied to criminal acts related to crimes related to Online Gender-Based Violence Against Women, by referring to several provisions regarding crimes that have been regulated in it but with the intention of drafting the law. According to the law, these articles are not intended to protect victims of Online Gender-Based Violence Against Women and from a moral perspective that can convict victims, causing legal uncertainty.

2. Law Number 11 Year 2008 jo. Law Number 19 of 2016 concerning Information and Electronic Transactions

The government through the Law on Electronic Transactions and Information was formed with the aim of providing security and legal certainty in the use of technology, although it is virtual but is categorized as real legal actions and actions because the online space has special characteristics so that regulation and law enforcement in it cannot use measures. conventional. In this case, there will be too many objects and other things that will escape the snares of the law.

In its implementation, the Electronic Information and Transactions Law caused victims even after it was revised in 2016. What was originally present as a guarantee of legal certainty for information and electronic transactions actually threatens and has the potential to curb freedom of expression which can result in victims being criminalized on charges of spreading false information. pornography or defamation. The following is a description related to actions that can be categorized as Online Gender-Based Violence Against Women as well as several articles that cause criminalization and even cause restrictions on public access to information.

a. Article 30 paragraph (3) jo. Article 46 paragraph (3) of the Electronic Information and Transaction Law

Any Person who knowingly and without rights or unlawfully accesses a Computer and/or Electronic System in any way by violating, breaking through, exceeding, or breaking into the security system.

Violence against women based on gender online which can be regulated or punished in Article 30 paragraph (3) jo. Article 46 paragraph (3) of the Law concerning Electronic Information and Transactions in the form of accessing data or communications without permission. In this case, the perpetrator can break into e-mail, digital storage media and even communication tools for victims to get content. Not only taking content, but sometimes collecting and disseminating the victim's personal data so that doxing occurs.

b. Article 31 paragraph (2) jo. Article 47 of the Electronic Information and Transaction Law

Every Person intentionally and without rights or against the law intercepts the transmission of Electronic Information and/or Electronic Documents that are not public from, to, and within a certain Computer and/or Electronic System belonging to another Person, both of which do not cause any changes or which causes changes, omissions, and or termination of Electronic Information and/or Electronic Documents that are being transmitted.

Violence Against Women Based on Gender Online which can be regulated or punished in Article 31 paragraph (2) jo. Article 47 of the Law on Information and Electronic Transactions in the form of online stalking carried out by wiretapping. Wiretapping in the Law on Electronic Information and Transactions in accordance with the explanation of Article 31 paragraph (1) is listening, recording, deflecting, changing, inhibiting, and/or recording the transmission of Electronic Information and/or Electronic Documents that are not public in nature, either using a cable network. communications or wireless networks, such as electromagnetic or radio frequency beams.

c. Article 32 paragraph (1) and paragraph (2) jo. Article 48 paragraph (1) of the Electronic Information and Transaction Law

- 1) *Everyone intentionally and without rights or against the law in any hides Electronic*

Information and/or Electronic Documents belonging to other people or public property, way alters, adds, reduces, transmits, destroys, removes, transfers.

- 2) *Any person who without rights in any way transfers Electronic Documents to the electronic system of another person who is not entitled or transfers Information.*

Sometimes intimate content doesn't exist. However, to smoothen the acts of harassing, threatening, and psychological violence carried out, the perpetrators can manipulate content or intentionally create content that imitates someone, for example editing photos of victims and attaching other photos in the form of nudity.

Violence Against Women Based on Gender Online which can be regulated or punished in Article 32 paragraph (2) jo. Article 48 paragraph (1) of the Law on Information and Electronic Transactions in the form of:

1. Dissemination of intimate content without consent if accompanied by alteration of documents
2. Accessing data or communications without permission

d. Article 35 jo. Article 51 paragraph (1) of the Electronic Information and Transaction Law

Everyone intentionally and without rights or against the law manipulates, creates, changes, deletes, Electronic Documents with the aim that the Electronic Information and/or Electronic Documents are considered as if the data is authentic or destroys Electronic Information.

Violence Against Women Based on Gender Online which can be regulated or punished in Article 35 jo. Article 51 paragraph (1) of the Law on Information and Electronic Transactions is modifying data or communications without permission.

e. Article 27 paragraph (4) jo. Article 45 paragraph (4) of the Electronic Information and Transaction Law

Any person who without transmits or makes accessible Electronic Information or Documents that contain extortion, rights distributes or Documents that contain extortion

Violence against women based on gender online which can be regulated or punished in Article 27 paragraph (4) jo. Article 45 paragraph (4) of the Law on Information and Electronic Transactions is all forms of Online Gender-Based Violence Against Women accompanied by extortion or threats to spread intimate content through messages, telephones, actions to force victims to do unwanted things. For example, sending some mon-

ey, reconnecting with the perpetrator, sending other intimate content, and so on.

f. Article 29 jo. Article 45B of the Electronic Information and Transaction Law

Everyone intentionally and without rights sends Electronic Information and/or Electronic Documents that contain threats of violence or intimidation that are intended personally.

Violence against women based on gender online which can be regulated or punished in Article 29 jo. Article 45B of the Law on Electronic Information and Transactions, namely all forms of online gender-based violence against women accompanied by threats. In the revision of the Law on Electronic Information and Transactions in 2008, the substance of Article 29 of the Law on Electronic Information and Transactions includes cyberbullying in its scope. The purpose of cyberbullying in this case is limited to bullying in the cyber world that contains elements of threats of violence or intimidation and results in physical, psychological, and/or material harm. This means that what happens in cyberspace in other non-physical forms, such as spreading rumors, posting fake news, short messages that hurt feelings, embarrassing comments or photos, to excommunication from a group, are not included in the scope of the crime of cyberbullying. "Cyberbullying" in this article has the potential to overcriminalize and be applied in a rubbery manner. The problem of bullying in cyberspace without a clear definition and the intended boundaries can result in multiple interpretations.

g. Article 27 paragraph (1) of the Electronic Information and Transaction Law

Everyone intentionally and makes accessible electronic information, electronic documents that have content that violates decency and without rights distributes or transmits.

Violence Against Women Based on Gender Online which can be regulated or punished in Article 27 paragraph (1) of the Law on Information and Electronic Transactions, namely:

1. Dissemination of intimate content without consent
2. Online harassment
3. Modify data or communications without permission
4. Sexual exploitation online

5. Trafficking in women
6. Recruitment for exploitation
7. Sextortion

Article 27 paragraph (1) can be charged when there are acts of online gender-based violence against women accompanied by the distribution of content that violates decency. The joint decree of the Guidelines for the Implementation of the Law on Information and Electronic Transactions (SKB Pedoman UU ITE) against “contents violating decency” is defined as content by the community deemed to violate social rules agreed upon in a society. However, in this case, cyberspace works across borders, so a norm that is contradictory in one area does not automatically conflict in another area.

The orientation of criminalization and its application is only on the content of morality, not on how the information or documents are distributed or transmitted. This happened in the case of Baiq Nuril, who recorded an unwanted conversation with his superiors, and gave the recording to a party who could process his complaint, so that he was accused of transmitting content that violated decency to people. In fact, in this case he was trying to prove the case of abuse against him. Because Article 27 paragraph (1) has multiple interpretations that threaten the right to legal certainty, has the potential to threaten the right to expression, can ensnare victims and do not protect victims who do not want their personal content to be spread. The phrase “transmit” is interpreted to mean natural persons, so that it can ensnare content of a personal correspondence that causes legal uncertainty.

Within the framework of Indonesian criminal law, the Law on Electronic Transactions and Information is still problematic as a norm, because the initial intention of the formulation was oriented to content by not protecting victims. For example, Article 27 paragraph (1) of the Law on Information and Electronic Transactions can be used to ensnare cases of revenge porn. However, this formulation is still content-oriented, so victims who are entangled in such content can still be subject to criminal threats. In several cases, the Law on Information and Electronic Transactions actually places victims of online gender-based violence against women in a difficult position by opening up opportunities for criminalizing victims of online genderbased violence against women, for example, in the case of Baiq Nuril above. A similar case that shows the failure of the Law on Information and Electronic Transactions in providing protection to women occurred in the case of F. A

copy of a private conversation containing decency which was allegedly carried out with a controversial public figure was spread on the cyberspace site. The site was reported on charges of violating Article 27 paragraph (1). Several months later, he was declared a suspect on suspicion of spreading decency content, but on the basis of Article 4 paragraph (1) of the Pornography Law (Akhdhi Martin Pratama, et al, 2017) While the content that is being spread is a private conversation that has not even been verified. So that the existing laws and regulations in Indonesia currently have limitations in terms of protection for women victims. (Fafiyah Alaidrus, 2019)

The formulation of problematic norms which has implications for the lax application of criminal articles in the Law on Information and Electronic Transactions, especially Article 27 paragraph (1), causes revenge porn women to continue to be potential perpetrators because they are objects in existing video recordings or photos. Especially if the recording is done consensually for personal gain, but then it is misused. Although the Pornography Law provides an exception for personal interests, the Law on Information and Electronic Transactions does not make such an exception. Another problem is that women victims of violence also experience fears of being entangled in criminal defamation if they report the cases they experience. The legal system in Indonesia has not adequately accommodated the experiences of women victims of violence and the addition of labor arrangements for criminal offenses and its application has made women victims who voiced the violence they experienced vulnerable to criminalization with accusations of insult or defamation. So that the Law on Information and Electronic Transactions has not been able to provide the protection needed by women victims of violence, instead, the criminal articles of the Law on Electronic Information and Transactions, for example related to decency and humiliation and/or defamation, in various cases used as a means to re-victimize victims of violence, both in the real world and online. This issue needs to be brought to the attention of the legislators in revising the Law on Information and Electronic Transactions.

3. Law Number 44 of 2008 concerning Pornography

The Pornography Law specifically mentions the prohibition on the distribution of por-

nographic content, be it the production, creation, reproduction, distribution including broadcasting and trading of pornographic elements. The scope of pornography in this law is very broad, ranging from sexual intercourse, sexual violence to showing genitals. However, this law does not only ensnare perpetrators of spreading information through pornographic content. However, models contained in pornographic information can also be ensnared.

a. Article 4 of the Pornography Law

Everyone is prohibited from producing, creating, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains:

- a. Coitus;*
- b. sexual violence;*
- c. Masturbation;*
- d. Nudity or an impressive display of nudity;*
- e. Genitals; or*
- f. Child pornography.*

The provisions of Article 4 of the Pornography Law support the prosecution of perpetrators of online genderbased violence against women who produce intimate content or pornographic content. However, this article provides limitations on the private sphere as well as affirms the prohibition of reproduction in this case the distribution of intimate content without consent. This article can be used to corner and criminalize the victim as stated in "providing explicitly the elements of nudity and sexual intercourse" for taking a role to commit pornography.

b. Article 8 of the Pornography Law

Everyone is prohibited from intentionally or with his/her consent being an object or model that contains pornographic content

Gender-Based Violence Against Women Online which can be regulated or punished under Article 8 of the Pornography Law is the dissemination of intimate content without consent. In this case, weaken the victim with the condition of the victim as an object in intimate content or pornographic content. Under Article 8 of the Pornography Law, a person can only be charged with this article when the person in the content knowingly or with consent is involved in the content. However, a person under threat, or under the control of another person, is persuaded or deceived, deceived by another person and without intention or consent then a person cannot be convicted.

The Pornography Law can make a person worry and feel afraid of the possibility of criminalization, especially if the content is involved in the

creation of digital intimate content. In one case of Online Gender-Based Violence Against Women, sexually charged digital content that recorded the victim was distributed without the victim's consent, causing the victim to be criminalized by using the rules in the Pornography Law. In the 2020 Constitutional Court Decision, Article 4 of the Pornography Law provides limitations on the private sphere and affirms that the prohibition exists for activities that are 'multiply' in the context of 'dissemination' and 'commerciality', not for other things. This article provides an exception regarding privacy rights in pornography. The phrase 'providing explicit elements of nudity and sexual intercourse' can be ensnared by victims of Online Gender-Based Violence Against Women as suspects, because they have taken on the role of offering pornography. Meanwhile Article 8 creates legal uncertainty, with the argument "that the presence of Article 8 of the Pornography Law creates two more subjects of perpetrators in a series of activities related to pornography which have been regulated in Article 4, namely the 'object or model' without an affirmation of the context of 'dissemination and commerciality'. This article only sees pornography as an object, but does not see that parties involved in the production of pornography can become victims of sexual violence and victims of Online Gender-Based Violence Against Women. This rule does not regulate consideration if someone who becomes the object is based on certain conditions such as coercion or threats. It can be seen that there are several problems with existing legal weaknesses related to Online Gender-Based Violence Against Women, namely, firstly, there is no protection against violence in the Pornography Law. Second, there is no consideration of situations and conditions that cause legal uncertainty such as coercion on victims.

4. Law Number 12 of 2022 concerning the Crime of Sexual Violence

Sexual violence that is facilitated by the presence of digital technology or electronic media is one of the dominant forms of online gender-based violence against women. There are several forms of online gender-based violence that have been accommodated in the sexual violence act, namely secretly recording intimate content, threats and dissemination of intimate content, stalking, and tracking. In the Sexual Violence Act, this act is included in the category of electronic-based sexual violence

The regulation of online genderbased violence against women contained in the sexual violence criminal act is regulated as follows:

Article 14 paragraph (1) of the Criminal Act of Sexual Violence

1. *Any person without rights:*
 - a. *Recording and/or taking pictures or layer captures that are sexually charged against the will or without the consent of the person who is the object of the recording or layer capture or images, and/or*
 - b. *transmitting electronic information and/or electronic documents that are sexually charged against the will of the recipient against sexual desires;*
 - c. *stalking and/or tracking using an electronic system against a person who is the object of electronic information/documents for sexual purposes, shall be punished for committing electronic-based sexual violence, with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah)*

In Article 14 paragraph (1) letter b it is known as the dissemination of non-consensual intimate videos or photos and in letter b it is known as techenabled surveillance or surveillance using technology. The ratification of the Law on the Crime of Sexual Violence seeks to implement breakthroughs in preventing and handling violence, as well as restoring victims.

The law is tasked with creating legal certainty, especially written legal norms because it has the aim of creating order and being a guide for behavior in society. A regulation is made and promulgated with certainty because it regulates clearly in the sense that it does not cause multiple interpretations and is logical. The application of legal certainty over the regulation of online gender-based violence against women used in Indonesian criminal law is as follows: first, in the Criminal Code. Second, it is necessary to revise the law or official guidelines regarding several multi-interpreted articles and rubber articles in the Law on Information and Electronic Transactions so that there is legal certainty in digital content.

Conclusion

The scope of regulation online genderbased violence within the legal framework in Indonesia that provides for the prohibition of acts, protection of victims, handling of victims and the participation of the private sector, namely the criminal code, Law Number 19 of 2016

concerning Electronic Transactions and Information, Law Number 44 of 2008 concerning Pornography, Law Number 12 of 2002 concerning Crimes of Sexual Violence and various arrangements regarding the rights of victims in accordance with legal certainty.

Suggestion

The legal framework must be accompanied by building awareness and attitudes regarding online gender-based violence from both the public sector and law enforcement officials, regulating the handling and protection of victims and/or suspects of violence, as well as regulating the obligations of the private sector.

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