

The Legal Protection for Women Victims of Revenge Porn Crimes Who Experience Victimblaming

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Abstract. *The concept of victim blaming is the justification of injustice by finding defects or faults in victims, in the concept of victim blaming women as victims who are blamed through words and sentences in media reports, women at one time are described as victims as well as triggers for rape that befalls them. In the case of revenge porn cyber-based sexual violence, the victim experiences losses that threaten mentally/psychologically as a result of the victimblaming that has been experienced by the victim, of course, the form of compensation in the form of material or money is inadequate if it is not accompanied by efforts to recover the victim's mentality. The type of research used by the author is normative juridical research, which is research that refers to research involving laws and regulations, court decisions, and legal practices in society. By using a statutory approach, a case approach. There is no specific law governing revenge pornography, but there are laws that can be alternatives to protect victims, such as: 1. Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, 2. Law Number 39 of 1999 concerning Human Rights, 3. Law Number 1 of 1946, 4. Law Number 19 of 2016 concerning Electronic Information and Transactions, 5. Law Number 44 of 2008 concerning Pornography, 6. Law Number 12 of 2022 concerning Sexual Violence*

Keywords: *Protection; Revenge; Sexual; Victimblaming.*

1. Introduction

Violence against women is the most cruel act of human rights violations experienced by women. Violence against women can be said to be the tip of the iceberg phenomenon, because the data revealed is far less than the facts that occur on the ground. Because not all women who experience violence are willing to report violence experienced to others or the authorities. It also makes it difficult to clearly disclose valid data on cases of violence against women. Therefore, it is not wrong if the act of violence against women by the United Nations (UN) organization is called a crime against humanity. Based on biological facts, it considers the role of men to hunt wild animals, while the role of women is to care for and raise offspring. Unconscious division of roles creates social mechanisms that make men superior to women in many ways. As a result, men then abuse their "power" to commit acts of violence [1].

In 1979, the UN General Assembly adopted the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). More than 130 UN member states agreed to abide by most of the Convention. They commit themselves to harmonize their country's laws with CEDAW guidelines, and to make planned efforts to promote equality and equality of rights [2].

Sexual violence against women shows psychological humiliation and physical aggression, both of which are threats to women's sexual identity and freedom. In this sense, sexual violence includes any form of aggression that involves the use of women's bodies against their will. Conversely, according to Nussbaum, women as human beings also have dignity and dignity that must be respected by law and social institutions. On the one hand, there are many cases where people continue to blame women as victims of sexual violence. According to Shopiani, when it comes to *victimblaming*, women are considered guilty of a number of factors, including their style of dress, their association, and not paying attention to the victim's circumstances. So, so far, the response to sexual violence against women in Indonesia has always had the potential to widen to other layers of objectives, such as accusing victims [3].

In society, women are considered as representations of chastity and honor, and formed concepts of morality related to women. This concept causes sexual violence against women is often seen as a disgrace. While women often do not report violence, victims may refrain from reporting sexual violence for several reasons. Among them is the fear that they will be blamed for the events that occurred, they cannot be trusted, or they will be treated shamefully or unfairly by the authorities which can worsen their mental state in the long run [4].

Now the industrial revolution is starting to enter the era of 5.0 where the internet as a necessity is used to access and also share information by the public.

People today seem to have merged with technology and the internet because of all the technological sophistication that exists. But this advancement is misused by its users in utilizing technology, causing *cybercrime* [5]. Another impact of the increasing use of the internet is the increasing cases of cybercrime, also known as cybercrime. *Hacking, cyber bullying, wiretapping, copyright infringement, pornography, and Online Gender-Based Violence (KBGO)* are some types of *cybercrime* [6]. KBGO is a type of gender-based violence facilitated by technology that harasses victims based on their gender or sexual identity [7]. Revenge Porn is one type of KBGO that is currently rife.

In general, CATAHU 2023 *Komnas Perempuan* noted that there was an increase in the number of complaints of Violence against Women in the Online Gender-Based Violence (KBGO) cluster to *Komnas Perempuan* from 2020-2022.

Table 1. *Komnas Perempuan* Annual Record Data

Year	Report
2020	940
2021	1721
2022	1697

Revenge porn is a term to describe intimate images or videos that were originally created in a private relationship but later revealed to the public over the internet without the consent of the person featured in them. *Revenge porn* usually occurs because there is an intention of revenge or hurt, humiliate, and harass one party. Threats and intimidation to share pornographic videos and photos are the most common types of cyber cases. Many couples are sending explicit content to each other through social media because of this phenomenon, which has caused revenge pornography to become increasingly common.

The *revenge pron* case that has occurred on social media is the spread of Gisella Anastasia's pornographic video with Michael Yukinobu. The case occurred in November 2020. Gisella stated that the incident took place in 2017, she captured the video through her personal smartphone and only gave it to Michael. However, the smartphone was lost and later found by unscrupulous individuals who misused it irresponsibly. The incident was later investigated by the police and in December 2020, the pelisi determined that Gisella and Michael were

suspects. He was entangled in Article 4 Paragraph 1 jo Article 29 or Article 8 of Law No. 44 related to Pornography and threatened with 6 months in prison or a maximum of 12 years in prison. The end of this case is that finally the two defendants who distributed pornographic videos of Gisella and Michael and the two defendants were sentenced to 9 months and fined 50 million subsidiary to 3 months in prison by the South Jakarta PN judge on July 13, 2021.

The issue of revenge porn is very interesting to study, because the case includes online-based gender violence which is very easy in today's era to access ranging from photos, videos and news related to revenge porn cases. Women are considered as representations of chastity and honor, and formed concepts of morality related to women. This concept causes sexual violence against women is often seen as a disgrace. Such community behavior can be a factor in victim blaming. The concept of victim blaming is the justification of injustice by finding defects or faults in victims of injustice, in the concept of victim blaming women as victims who are blamed through words and sentences in media reports, women at one time are described as victims as well as triggers for rape that befell them. Informants of victims of sexual harassment also said that victims of sexual harassment are often blamed by those around them and irresponsible perpetrators, so victims of harassment cannot maintain justice victims are blamed by portraying victims as well as triggers sexual harassment [8].

Due to the non-regulation of *revenge porn* specifically in Indonesia's positive law, in this case victims are greatly disadvantaged by Indonesia's positive legal inequality. In addition, considering the differences in societal views that perpetuate gender injustice through *victim blaming* actions that must be minimized and provide a safe environment for women who are victims of sexual harassment.

2. Research Methods

The type of research used by the author is normative juridical research, which is research that refers to research involving laws and regulations, court decisions, and legal practices in society [9]. Another term for normative legal research is doctrinal legal research. In this study, law is often defined as what is written in a law book *or* as rules or norms that determine people's behavior towards what is considered good [10]. By using the legal approach (*statute approach*) case approach [11].

3. Results and Discussion

3.1 Factors Causing *Victim Blaming* in Victims of *Revenge Porn*

Sexual harassment is a serious problem, where the impact is very detrimental to individuals who experience it, not only has a physical and psychological impact, but can also trigger the phenomenon of *victim blaming*. The victim's position in "blaming the victim" is always seen as a passive object that can attract and cause "guilt", while the perpetrator is positioned as a passive subject who is ostensibly "captured" by a force that he cannot control and occurs naturally. This is particularly noticeable in victims of sexual violence [12].

Victim blaming occurs because there are errors and misconceptions about gender attitudes and identities, which are reflected in the division of roles and social constructions that require women to conform to established norms. Thus, when a woman experiences sexual harassment caused by not meeting the expectations of society, it is attributed to the attitude and gender identity shown by the victim [13]. There are several factors that cause *victim blaming*, namely:

1. Traditional views on gender

Victim blaming is generally done by people who have limited views on women's roles and rights. Although men can also be victims of sexual violence, *victim blaming* cases are actually much more common in women. Researchers found a correlation between *victim blaming* and sexism or the view that women are lower in status and need male protection.

2. Linking past events

When looking at events that have already happened, humans tend to believe that we can see the signs and predict the results. This attitude makes it seem as if the victim of crime or other misfortune should have prevented any problems from befalling when in fact there is no way to predict the outcome [14].

3. Media News That Doesn't Have a Victim's Perspective

With the media reporting that makes victims of violence the main object in the news, *forms of victim blaming* against women victims of violence are very easy to find. It's easy to find comments from news readers who corner and blame the victim on the case. In addition, the confidentiality of the victim's identity is the main focus in media reports, they do not tell the full name of the victim but the victim's age, address, and victim status are very clearly reported, this makes there is a feeling of fear in women victims of violence when they want to report or solve their cases [15]

4. Absence of Sympathy and Empathy

Lack of sympathy and empathy because people lack social sensitivity and lack of sense of responsibility so they tend to ignore the consequences and consequences. This unpositive community response has made many victims and the public silent despite knowing or experiencing a case of sexual harassment. There are many cases of sexual harassment that occur, and victims live in silence while perpetrators live freely because no reports are made.

5. Underestimating Victims of Sexual Harassment

The behavior of society that looks down on victims of sexual harassment is a manifestation of *victimblaming*. According to society, sexual harassment can happen because women or victims also want such acts. If he didn't want to, then the abuse wouldn't happen [16].

3.2. Legal Protection for Revenge Porn Victims Who Experience Victim Blaming

Victims of crime have the rights to legal protection which is why the victim is devastated by the perpetrator. One of the principles that can be used as victims' rights is the principle of *equality before the law*.

Protection according to Law No. 31 of 2014 concerning the Protection of Witnesses and Victims is all efforts to fulfill rights and provide assistance to provide a sense of security to victims which must be carried out by the Witness and Victim Protection Agency (LPSK) or the Witness and Victim Protection Agency (LPSK) or other institutions in accordance with the provisions of this Law (Law No. 31 of 2014 concerning the Protection of Witnesses and Victims, 2014).

Legal protection for victims is regulated in the UN declaration which states that it has recommended that at least 4 (four) things be considered as follows [17]:

1. *Acces to justice and fair treatment.*
2. Payment of damages (*restitution*) by the perpetrator of the criminal act to the victim, his family or other person whose life is formulated in the form of a criminal sanction in the applicable legislation.
3. If the convict is incapacitated, the state is expected to pay financial *compensation* to the victim, his family or those who are dependents of the victim.
4. Material, medical, psychological and social assistance to victims, whether through the state, volunteers, community (assistance).

There is no specific law governing the criminal act of revenge pornography, but there are alternative laws that can protect victims, such as the following:

1. Law No. 31 of 2014 concerning Protection of Witnesses and Victims.

Article 1 paragraph (2)" reads: "A victim is someone who experiences physical, mental, and/or economic losses caused by a criminal act". In the explanation of the article, "it is clear that the victim has less bargaining power over what he experiences from the consequences of a criminal act than to give up every interest to be represented by the state. Moreover, related to the position of victims as a result of *cyber pornography*, of course, they are very vulnerable and harmed materially and immaterially, and psychologically will be disturbed, their good name is also polluted and gets a negative stigma from society."

Article 5 "There are also victims who have the right during the initial process of justice until it is completed, victims receive protection from the LPSK (Victim Witness Protection Agency) in accordance with what is regulated by law. The LPSK helps provide victims with legal rights and assistance that victims should receive

2. Law No. 39 of 1999 on Human Rights

Pasal 30 dan Pasal 35" kedua pasal ini menjamin "Setiap warga negara untuk bebas dari rasa takut dan ancaman".

3. Criminal Code (KUHP)

The crime of pornography intentionally and with a culpa (Article 282) found the sentence "... broadcast, display or publicly introduce writings, images or objects that he knows violate decency".

4. Law Number 19 of 2016 concerning Electronic Information and Transactions

Article 27 paragraph (1) reads: "Everyone intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that have charges that violate decency".

5. Law Number 44 of 2008 concerning Pornography

Article 4 paragraph 1 "reads: "Regulates the prohibition of producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or otherwise making available pornography that explicitly contains: (a) compounds, including deposited compounds; (b) sexual

violence; (c) masturbation or masturbation; (d) nudity or the impressive display of nudity; (e) genitals; (f) child pornography".

6. Law Number 12 of 2022 concerning Sexual Violence

Victims of revenge porn are protected by Article 14 paragraph 1 letter a of the Sexual Violence Criminal Law concerning electronic-based sexual violence, which reads "Any person who without the right to record and/or take sexually charged images or screenshots against the will or without the consent of the person who is the object of recording or images or screenshots" where the perpetrator can be sentenced to imprisonment for a maximum of four years and/or a maximum fine of IDR 200 million.

Since revenge pornography falls under the category of *cyber pornography*, protection for victims of revenge pornography tends to refer to the ITE Law. In the case of revenge pornography, immoral content is widely spread on the internet without the consent or knowledge of the victim. This case can be attributed to Article 26 of the ITE Law, which provides guarantees for personal data protection. This article requires the relevant consent before the use of information through electronic media because it relates to personal data. Article 26 can provide protection for victims of sexual harassment.

In the case of *cyber-based sexual violence revenge porn*, the loss threatens mentally/psychologically as a result of victimblaming that has been experienced by the victim, of course, the form of compensation in the form of material or money is inadequate if it is not accompanied by efforts to recover the victim's mentality. In some cases of online pornography, the harm and suffering experienced by the victim is only used as an excuse to impose punishment on the perpetrator but the victim does not get reparation for the suffering they experienced. To balance the condition of the victim so that it can recover to its original state, various recovery efforts must be taken, such as financial, medical and psychological recovery, as well as through legal channels [18].

Indeed, we cannot prohibit others from expressing their opinions because this is stated in the fourth amendment to the Constitution of the Republic of Indonesia 1945 in Article 28E paragraph (3) which states that "everyone has the right to freedom of association, assembly, and expression." The fulfillment of human rights or fundamental freedoms does not apply absolutely. Freedom of expression should not be interpreted as freedom to blaspheme, spread hatred speech or be done with the motive of insulting (libel), defamation *or slander* (slander).

Related to *victimblaming* committed against victims of *revenge porn* in this case the community can be charged with several articles, including:

1. Good Name Pollution

Article 310 paragraph 1 of the Criminal Code "Whoever deliberately attacks the honor or good name of a person by accusing something, which has the clear intention of making it public, shall be threatened with defamation with a maximum imprisonment of 9 months or a maximum fine of Rp. 4.5 million"

Table 2. Acts that include contamination of good name

Blasphemy	Article 310 verse 1 KUHP
Sacrilege with Letters	Article 310 verse 2 KUHP
Libel	Article 311 KUHP
Mild Insults	Article 315 KUHP
Slander Complaint	Article 317 KUHP
The act of defamation	Article 318 KUHP

2. Hate Speech

Law Number 19 of 2016 concerning Electronic Information and Transactions ("Law 19/2016"). The imposition of hate speech sanctions carried out on social media can be based on Article 45A paragraph (2) of Law 19/2016 as follows: "Any person who intentionally and without rights disseminates information aimed at causing hatred or hostility of individuals and/or certain groups of people based on ethnicity, religion, race, and intergroup (SARA) as referred to in Article 28 paragraph (2) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine a lot of Rp1,000,000,000.00 (one billion rupiah)".

Meanwhile, based on the Circular Letter of the Chief of the State Police Number SE / 6 / X / 2015 of 2015 concerning the Handling of Hate Speech ("SE KAPOLRI 6/2015") it is explained that hate speech can be in the form of criminal acts regulated in the Criminal Code and other criminal provisions outside the Criminal Code, which take the form, namely: insults; defamation; blasphemy; unpleasant

deeds; provoke; incitement; the spread of fake news; and all of the above actions have purpose or could have an impact in acts of discrimination, violence, loss of life, and/or social conflict.

3. Unpleasant Deeds

Article 335 paragraph 1 of the Criminal Code, reads as follows: "Shall be punished with imprisonment for not more than one year or a fine of not more than four thousand five hundred rupiah: Whoever unlawfully compels another person to do, not do or condone something, by using force, something else or unpleasant treatment, or by using threats of violence, something else or unpleasant treatment, both towards oneself and others. Whoever compels others to do, not to do or condone anything under threat of desecration or defilement".

4. Conclusion

In the case of cyber-based sexual violence revenge porn, the loss threatens mentally/psychologically as a result of victimblaming that has been experienced by the victim, of course, the form of compensation in the form of material or money is inadequate if it is not accompanied by efforts to recover the victim's mentality. In some cases of online pornography, the harm and suffering experienced by the victim is only used as an excuse to impose punishment on the perpetrator but the victim does not get reparation for the suffering they experienced. Indeed, we cannot prohibit others from expressing their opinions because this is stipulated in the fourth amendment to the Constitution of the Republic of Indonesia 1945 in Article 28E paragraph (3). Freedom of expression should not be interpreted as freedom to blaspheme, spread hatred speech or be done with the motive of insulting (libel), defamation or slander (slander). Related to victimblaming committed against victims of revenge porn in this case the community can be charged with several articles, including: 1. Defamation is contained in Article 310 paragraph 1 of the Criminal Code, 2. Hate Speech is contained in Article 45A paragraph (2) of Law Number 19 of 2016, 3. Unpleasant Acts are contained in Article 335 paragraph 1 of the Criminal Code.

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