

Law Enforcement of Online Gender-Based Violence in Indonesia: A Review of Victims Protection

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Abstract. Indonesia is one of the countries with the largest internet users in the world. One of the risks of using the internet is the occurrence of Online Gender-Based Violence (OGBV). The resolution of OGBV cases so far in Indonesia is based on the Information and Electronic Transactions Law and the Pornography Law. Legal problems arise because these regulations do not have a gender perspective, and focus on the perpetrators while the victims tend to be neglected. From this background, the problem formulation in this research is: What is the legal enforcement of OGBV in Indonesia? And how is victim protection of OGBV in Indonesia? This research is normative legal research that uses a statutory approach. This research result showed that legal protection for OGBV victims in Indonesian law, as regulated in: the Criminal Code, the Pornography Law, the ITE Law, and the UUTPKS. Of the four regulations, the UUTPKS more specifically regulates OGBV. Apart from that, victim protection in Indonesia is specifically regulated in Law Number 31 of 2014 concerning Witness and Victim Protection or UUPSK. Then in real terms, to protect OGBV victims, the Central Government through the Ministry of Women's Empowerment and Child Protection (KemenPPPA) formed a Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA) and provided the "SAPA 129" service which received complaints from various regions.

Keywords: Cyber, Gender, Law Enforcement, Victims.

1 Introduction

The internet is the impact of the development of technological advances which are currently used anywhere, anytime and by anyone. All kinds of information in various parts of the world can be known 24 hours a day via the internet or also called cyberspace. [1] In fact, currently almost all people in the world use the internet, this is as shown in the data in Figure 1 below:

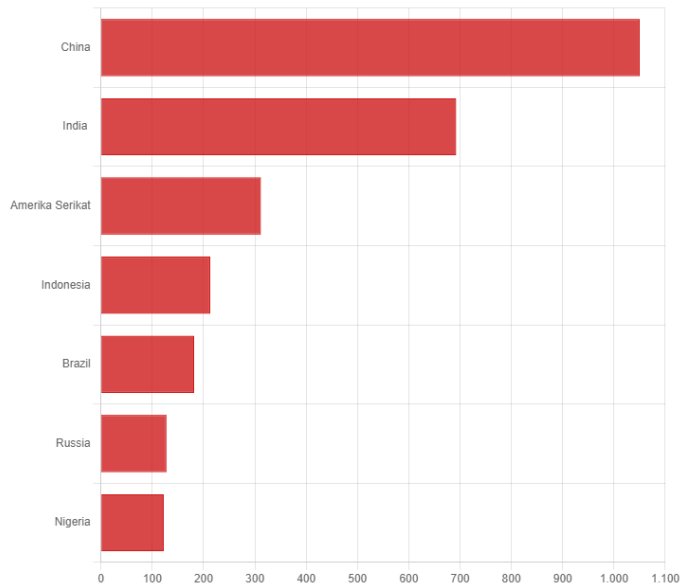


Fig 1. Data on Countries with the Largest Internet Users in the World

The global internet user base has surpassed 5 billion people. There are a total of 1.24 billion internet users in Southeast Asia, while countries in Africa and the Middle East tend to have lower user numbers. China has the biggest amount of people who use the internet in the entire globe. As many as 1.05 billion people can access the internet. This is equivalent to 75% of the total population, considering the population reaches 1.4 billion. In a day, Chinese residents spend an average of 6 hours 25 minutes using the internet. The second position is held by India with 692 million users. The United States follows in third place with half as many users as India, namely 311.3 million. Interestingly, with 212.9 million internet users, Indonesia is the world's fourth biggest online user country. [2] This data is similar to information regarding people using the internet in the nation of Indonesia, it grows year after year (see Figure 2 below):

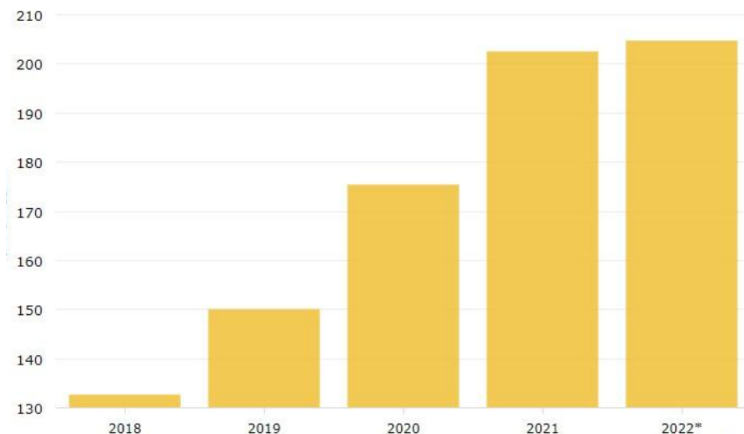


Fig 2. Data on Internet Users in Indonesia

As of January 2022, Indonesia had 204.7 million internet users. Compared to 2021, internet users in Indonesia increased slightly, namely 1.03%, whereas last year internet users in Indonesia were 202.6 million. If you look at internet user data for the last 5 years, internet users in Indonesia always experience positive aspects of the internet world. This will of course add to the trend in world technological development with all forms of human creativity. However, the negative impacts of the internet cannot be avoided, one of which is the existence of various crimes included in the type of cybercrimes. [3] With so many internet users in Indonesia, in other words, Indonesia cannot be free from the threat of cybercrimes. With so many internet users in Indonesia, in other words, Indonesia cannot be free from the threat of cybercrimes.

There are various forms of cybercrimes, one of which is sexual violence committed online. Even in the current era of digital technology, it turns out that sexual violence can be carried out by online. So, it can be said that sexual violence can not only be done physically or skin to skin but can also be done without touching. [4] Online sexual violence has occurred almost all over the world, even experienced by children, as shown in Figure 3 below:

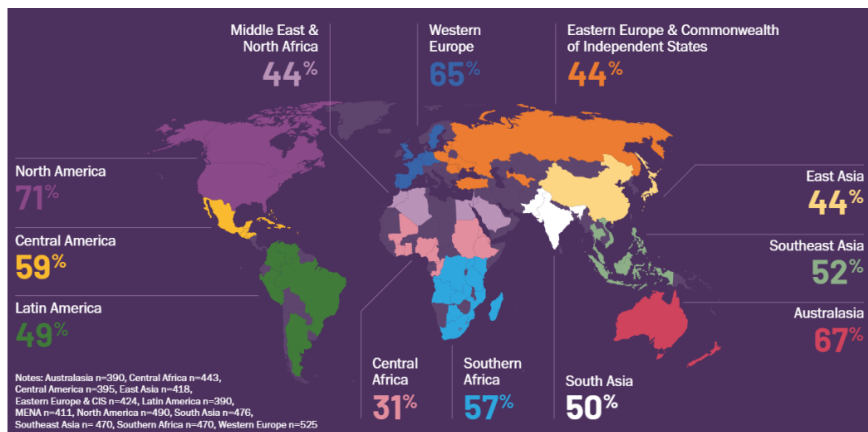


Fig 3. Percentage of People Who Have Experienced Sexual Violence Online

Based on a survey conducted by end-violence, from 2019 to 2020, there was a 106 percent rise in publicly reported instances of internet sexual exploitation. This survey also noted that online sexual harassment occurs in various countries around the world. WeProtect discovered that 57 percent of women and 48 percent of males had encountered at least one online sexual abuse incident in a survey of 5,300 respondents aged 18-20 years with regular internet usage. [5] Sexual assault perpetrated online has so expanded to numerous parts of the world, including Indonesia.

In the beginning, sexual violence was only usually carried out by society conventionally, namely directly without being facilitated by technology. The presence of the internet and social media has changed the paradigm that exists in society. Certain individuals are currently abusing this virtual space to serve as a conduit for gender-based sexual assault. The crux of the problem with online gender-based violence, or OGBV, was the misuse of authority or position of power. Although the criminal may attempt to persuade both the target and himself that the activities done were motivated by sexual attraction. [6]

In Indonesia, OGBV is common. According to the 2020 National Commission on Abuse Toward Female Quarterly Reports, it is a new type of sexual assault violence, which is known as cyber-based or online harassment of women.. Reports of assault have risen steadily during the prior six years, with a 300% increase in OGBV) in 2019 over the previous year. Based on the National Commission on Abuse Toward Female Quarterly Reports in 2020, as many as 940 OGBV incidents were reported. This number has increased compared to the previous year, namely 281 incidents. Because it occurs in the digital arena, this sort of violence has an increasingly sophisticated pattern of violence, according to the Commission. From character assassination to sexual harassment in cyberspace attacks. [7]

Basically, Indonesia has several legal regulations related to OGBV, including: Criminal Code, Legislation No. 44 in 2008 about Pornography or the Pornography Regulation, Regulation No. 11 in 2008 respecting electronic communications and information or the ITE Regulation, and Regulation No. 12 in 2022 regarding Sexual Violence or the TPKS Law. However, the data above shows that the existence of these regulatory provisions does not reduce the occurrence of OGBV. Several provisions of the OGBV law above still contain loopholes. The non-ideality is reflected in the regulation because it only focuses on the deterrent effect. Meanwhile, guaranteeing security and protecting victims is still something sidelined in several aspects that are part of the legal system. This is utterly at odds with the state's purposes, as declared in the 4th part to the Foreword to the Constitution from 1945 of the Republic of Indonesia. [8]

From this background, the issue formulation in this study is: What is the law enforcement of OGBV? And how is victim protection of OGBV? This is a normative law study conducted using a legislative procedure. This research will describe the legal issues involved in OGBV and analyze the legal protection of OGBV victims.

2 Discussion

2.1 1. Legal Enforcement of Online Gender-Based Violence in Indonesia

Day after day, even year after year, gender-based violence is rife. Gender-based violence can happen to anyone, both women and men. However, because we live in an environment where patriarchal culture is still very strong, this vulnerability to violence is more likely to occur among women. The perpetrator can be anyone, whether family, close friends, or other members of the public who we don't even know. The issue of gender-based violence is an important issue that continues to arise today. [9] OGBV is a form of sexual assault or abuse that solely affects one gender, especially women by the internet. OGBV cases are increasing every year, with the main victims being women and children. Most forms of OGBV involve the perpetrator distributing intimate photos/videos of the victim accompanied by threats to the victim. There are eight forms of OGBV including cyber grooming, cyber harassment, privacy invasion, harmful dissemination, digital slander and electronic hiring. [10]

Juridically at the national level, Indonesian legal instruments and legislation recognize the existence of legal protection for women from violence, including gender-based violence. The effort to guarantee security to the rights of females and kids with the goal of safeguarding them from abuse has been ongoing for many years. Among them are the Indonesia Criminal Code,

Legal 39 in 1999 of the Human Rights Security, Legal No. 7 in 1984 on Ratifying of the United Nations Convention upon the Abolition in Every Kind of Racism Opposition to Women, Legal No. 21 in 2007 upon the Abolition of Human Trafficking, Legal No. 23 in 2004 upon the Eradication of Family Violence, and lastly the Sexual Harassment Criminal activity Law. The sexual assault crime law, which was just passed in April 2022, is regarded as a significant step forward in safeguarding women from various forms of assault. In contrast to previous regulations which were considered to be partial in handling cases of violence, and more oriented towards punishing perpetrators, this Law is considered more comprehensive with articles that go beyond simply taking action against perpetrators. [11] The legal regulations related to OGBV can be grouped as follows:

Table 1. Legal Regulations Related to OGBV

No	Regulations	Provisions Related to OGBV
1.	Indonesia Criminal Code	Article 335 Indonesia Criminal Code provides provisions regarding the penalty to perpetrators of OGBV who use violence or threats by forcing someone to carry out or not carry out an action. Furthermore, there is Article 315 Indonesia Criminal Code, Article 281 number 2 Indonesia Criminal Code, and Article 289 Indonesia Criminal Code which relate to online sexual harassment and regulates punishment for perpetrators of OGBV in cases of sexual insults without accusations or possibly in the form of concrete action. Article 281 point 2 regulates the act of displaying sexual content with no the authorization from the individual involved. Besides, Article 289 regulates the use of threats or violence to force someone to act or allow sexual abuse to occur. Article 368 and Article 369 regulate punishment for perpetrators of OGBV crimes committed through extortion using violence or threats of violence to obtain personal gain.
2.	Pornography Law	In the Pornography Law there are provisions in articles relating to several acts of OGBV which can result in punishment for the perpetrator, namely Article 4, Article 8, Article 11 and Article 12. Article 4 of the Pornography Law contains prohibitions on generating, manufacturing, expanding, replicating, disseminating broadcasting, transporting, transferring, providing, marketing, renting, and supplying pornographic. Providing pornographic services here includes providing explicit nudity or displays that suggest nudity; Explicitly showing genitals; exploiting or displaying sexual activities; or directly or indirectly offering and advertising.

3.	ITE Law	The OGBV component is addressed in multiple articles of the ITE Law, the first of which is Article thirty line three along with the provisions of Article 46 line three in the Law on ITE. This article classifies an act of accessing someone's personal data or communication tools without that person's permission as being categorized as OGBV. Then there are other articles related to OGBV, namely: The provisions of Article 31 Section Two combined with the provisions of Article 47 from the ITE Law, the regulations of Section 35 in combination with the contents of Section 51 section (1) through of the ITE Law, Article 27 sentence four within in conjunction in Article 45 section (4), Section 29 within in conjunction in Section 45B from the ITE Law, and Section 27 chapter (1) within conjunction in Section 45 section (2). As in article 27 (paragraph 1), this article contains the moral content of the article which is very relevant to OGBV, Article 27 (paragraph 3) the article which regulates defamation, Articles 30 and 31 which contain the frequent unauthorized tapping of electronic systems. occurs in OGBV Cases.
4.	Sexual Violence Crime Law or TPKS Law	In the TPKS Law, there is one of the articles most relevant to the OGBV dimension, namely Article 14 of the TPKS Law. In this article, it is stated regarding the punishment for the actions of a person who does not have the authority to capture or record, disseminate electronic information/documents, which contain elements of sexuality and follow the victim wherever they go for sexual purposes will be sentenced to jail with a greatest detainment term of 4 a long time and/or a most extreme fine summing to 200 million rupiah.

Law enforcement regarding OGBV cases in Indonesia, initially law enforcement officers used the legal instruments of ITE Law and/or Pornography Law. However, in their progress, these two laws were deemed unable to provide clear legal certainty for victims due to overlaps in several regulations related to gender-based violence and misuse of digital technology. [12]

When viewed from the *ius constitutum* perspective, the structure of regulations regarding OGBV usually uses the ITE Law and Pornography Law. However, the implementation of these two laws does not have the same perception. These two laws are unable to protect victims and have a gender perspective. So, the legal umbrella that should be able to protect the victim can actually make the victim a suspect. Legal politics regarding regulations related to OGBV in the ITE Law give rise to multiple interpretations of terms which in the context of violating decency, this causes law enforcement officers to experience difficulties in practice. In Indonesia itself, efforts to resolve OGBV cases often lead to legal uncertainty which then creates injustice for the victims. With the ITE Law and Pornography Law which are implemented, they do not protect victims because they can actually make victims into suspects. [13]

2.2 Indonesia Protection of Victims in Online Gender-Based Violence

Gender abuse is sexual or gender abuse directly at a person. This includes acts that are harmful and result in physical, mental or sexual suffering; as well as threats, coercion and lack of freedom. The increasingly widespread reach of internet use has resulted in increasingly massive use of social media and implications for the presence of new forms of gender abuse or Online Gender-Based Violence (OGBV). OGBV has similarities to real-world gender-based

violence. In essence, acts of violence referring to gender and sexual nature have the intent and purpose of harassing the victim.[14]

Technology-facilitated OGBV, a bit like gender-based savagery within the genuine world. The act of viciousness must have the aim or reason of irritating the casualty based on sexual orientation or sexual. [15] Victims in OGBV usually feel embarrassed to report the perpetrator. Based on data from Thorn and the Crimes Against Children Research Center, of 1631 surveys conducted, only 17% of victims reported to law enforcement, while 26% of victims reported to websites and 54% of victims told their family or friends. The low number of reports to law enforcement is due to the fear and shame felt by victims to speak up about the OGBV that happened to them. [16] The small percentage of OGBV victims who report to law enforcement shows that there are weaknesses in legal protection for victims.

There are two penal policies in dealing with OGBV, namely implementing an coordinates criminal equity framework with sex equity and changing legitimate directions. The system of implementing criminal justice with gender justice is by actively involving victims in the case handling process. So, the casualty will be situated as a subject, not as a question whose data is as it were taken. As a subject, the casualty has the proper to have his articulation listened to, to get data approximately progressing lawful endeavors, to consider the sense of equity he wishes to get, and to have his circumstance reestablished due to the hardship of his rights and the savagery he experienced. However, victim participation in the criminal justice system is still very lacking. It appears within the case handling process as directed within the Indonesia Criminal Procedure Code which is more centered regarding defendants' rights. The Indonesia Criminal Procedure Code or KUHAP regulates more about the rights, participation and authority of institutions related to defendants. There are 20 (twenty) articles that regulate suspects and defendants in the KUHAP. Meanwhile, in KUHAP the term victim is mentioned only 6 (six) times. Therefore, to achieve a more active criminal justice system requires harmonization of all parts of the justice process, namely victims. [17]

As previously mentioned, basically the regulations related to OGBV are regulated in Indonesia Criminal Code, ITE Law, Pornography Law and the TPKS Law. However, these regulations have not been able to focus on gender and there are several regulations that have not accommodated the protection of victims. This can be analyzed through Table 2 below: [18]

Table 2. Analysis of Victim Protection in OGBV Regulations

No	Regulation	Victim Protection Analysis in the Regulation
1.	Criminal Code	There are various articles relating to OGBV in the Criminal Code, but none of these articles regulate the protection of OGBV victims.
2.	Pornography Law	Article 4 encourages punishment for OGBV perpetrators who create intimate-oriented information or pornography related to its distribution without permission or consent, including child pornography and the display of sexual violence. On the other hand, Article 8 of the Pornography Law actually results in the weakening of victims by making them objects in immoral or pornographic content. Then the next articles, namely Articles 11 and 12, encourage the imposition of crimes against perpetrators of OGBV related to child exploitation.

3.	ITE Law	The center of the ITE Law controls is more on substance related to ethical perspectives. Subsequently, this arrangement can target casualties and not give security to casualties who don't need their individual substance to be spread.
4.	TPKS Law	The TPKS Law also provides better protection for victims, compared to previous laws and regulations. An example is in provisions in Section 1 Part (16) on TPKS Law which mandates victims' rights to treatment, security and recuperation as a result of the viciousness they have experienced, with the aim of ensuring that victims avoid revictimization in the OGBV cases they experience.

From Table 2 above, it can be seen that legal protection for victims of OGBV is enshrined in positive law of Indonesia, as governed in: KUHP, the Pornography Regulation, ITE Regulation, and UUTPKS. Of the four regulations, the UUTPKS more specifically regulates online gender-based violence. The UUTPKS controls shapes of lawful assurance for casualties from each arrangement of the equity framework, separated from that there's too much security for the victim's family. Harmonization of legislation is very necessary, considering that there are contradictory substances in the laws and regulations governing online gender-based violence. So that this harmonization can provide legal certainty not only for victims, but also for law enforcers and society. [19]

Besides that, the protection of victims in Indonesia is specifically regulated in Legal No. 31 on 2014 Regarding the Security to Witnesses and Victims or UUPSK. The biggest impact on OGBV victims is the loss suffered by the victim mentally. Apart from that, OGBV acts also cause substantial damage to human rights which are fundamental human rights as Section 28G, line (1) within the Constitution of 1945. Therefore, OGBV victims crimes also have the right to receive protection in accordance with the provisions of the Legal No. 13 on 2006 which was amended in Law Number 31 of 2014 due to the definition of Article 1 paragraph (3) which is in accordance with OGBV victims. [20]

Based on Article 5 of the UUPSK, victims have several rights, such as obtaining protection for personal security and being free from threats, obtaining a modern character, getting a brief home, getting an unused home, receiving assistance, and others. As for Article 6, there are several other rights that can be given to victims of sexual violence crime. Additional rights that can be given to victims are restorative help and psychosocial and mental restoration help. [21]

Separated from giving therapeutic help and recovery, in Article 7A UUPSK which is encouraged and directed in Government Direction Number 7 of 2018, OGBV casualties as casualties of criminal acts are entitled to get compensation. Compensation is an exertion to reestablish the victim's condition to its unique condition (*restitutio in integrum*). The shapes of compensation commanded in Article 7A are a stipend for the misfortune of riches, a stipend for activities straightforwardly related to the result of a criminal act, and remuneration for therapeutic and/or mental treatment costs. Restitution must be requested by the victim, their family or their attorney through LPSK before or after the final court decision. In case compensation is submitted by the casualty, their family, or their lawyer some time recently the court choice has lasting legitimate drive, at that point, the LPSK can yield compensation to the open prosecutor at the trial which can at that point be included within the claim. In the mean

time, in case an ask for compensation is submitted after the court choice has been finalized, LPSK can yield compensation to the court to get a choice from the court. [22]

In addition, to protect OGBV victims, The Department of Empowerment of Women and Safety for Children of the Central Government (KemenPPPA) formed a District Operational Application Unit for Women and Children's Protection or UPTD PPA in each region. Prita Ismayani, Head of the Organization and Organization Area of the Service of Women's Strengthening and Child Assurance in a meeting on November 26 2021 through the Zoom Assembly application said that the security of ladies and children may be a government matter as aimed in Article 12 Section (1) of Law Number 23 of the Year 2014 concerning Territorial Government. To carry out government affairs, UPTD PPA were formed in each region. But in reality, only a few percent of regions make UPTD PPA. Apart from that, KemenPPPA also provides the "SAPA 129" service which receives complaints from various regions. So, the services provided to victims of regular and OGBV are sufficient, as long as they are handled well. [23]

3 Conclusions

Legal protection for OGBV victims in Indonesian regulation, as governed in: Indonesia Criminal Code, Pornography Regulation, ITE Regulation, and the UUTPKS. Of the four regulations, the UUTPKS more specifically regulates OGBV. Apart from that, victim protection in Indonesia is specifically regulated in Regulation 31 in 2014 in relation to Evidence and Causalities Safety or UUPSK. Then in real terms, to protect OGBV victims, Female Empowerment and Kids Safety Department of the Central Government (KemenPPPA) formed a District Operational Application Unit for Women and Children's Protection or UPTD PPA and provided "SAPA 129" service which received complaints from various regions.

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