

***LEGAL PROTECTION FOR WOMEN VICTIMS OF
REVENGE PORNOGRAPHY COMMITTED
THROUGH CYBERCRIME***

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ABSTRACT

This study aims to examine how legal protection is for women victims of revenge pornography committed through cybercrime, and whether Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence has accommodated legal protection for women victims of revenge pornography committed through cybercrime, as well as What is the post-recovery protection for women as victims of revenge pornography committed through cybercrime? However, even though legal steps have been taken, cases of revenge pornography still occur through cyberspace. This research uses normative research using a statutory and conceptual approach, legal norms and legal rules. Based on the research results, the regulations governing the protection of women victims of revenge pornography committed through cybercrime are Law Number 19 of 2016 concerning amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions, Law No. 44 of 2008 concerning Pornography, Law No. 12 of 2022 concerning Crimes of Sexual Violence. In Law No. 12 of 2022, the formulation of the criminal act of revenge pornography has not been fully accommodated, however, the recovery steps for women as victims of revenge pornography have been very good, both during the trial and post-sentence.

Keywords: *Legal Protection, Women, Victims, Revenge Pornography, Cybercrime.*

1. INTRODUCTION

Cybercrime or known as cybercrime is increasing. Cybercrime that has been rampant lately is cyberporn. Cyberporn is a criminal act that has increased in appearance along with the advancement of technology and is included in immoral crimes, cyber (internet technology) porn which means using internet technology as a tool to gain profit, which includes pornographic content and providing sexual services.¹ One of the Cyberporn that is currently rampant is revenge pornography or known as revenge porn.

From the annual records (CATAHU) 2023, as many as 1697 cases of gender-based violence were recorded in complaints to the National Commission on Violence Against Women, 869 of which occurred in the public sphere and in the personal sphere, 821 cases of KSBG, and dominated by electronic-based sexual violence (KSBE) where the most were carried out by ex-lovers as many as 594 cases and lovers 230 cases. Sextortion or sex blackmail, revenge porn or the distribution of sexually charged material as a form of revenge and distribution without permission are types of actions that are often reported.²

One of the revenge pornography cases that occurred in 2023 in Seunuddon sub-district, North Aceh, where a young man with the initials I was arrested by the police for spreading a nude video of his ex-girlfriend on social media. The victim and the perpetrator, who were initially dating, had sexual intercourse, which was then recorded and saved by the perpetrator. When the relationship ended and the victim had a new girlfriend, the perpetrator spread the nude video on social media to vent his heartache. In the end, the perpetrator was charged with Article 27 paragraph 1 in conjunction with Article 45 paragraph 1 of the Electronic Information and Transactions Law.³

Legal protection for women as victims of crime is an issue that will never end if discussed in community life. Sometimes a crime that is resolved through the courts realizes justice but not with legal certainty.⁴ The existing law, in addition to providing certainty and protection, must also be able to restore the balance of the system in the life of a disturbed society, this is in accordance with the principles of the concept of legal protection for victims of crime. This balance is the most important role in efforts to restore the rights of victims of crime. The existing laws are intended to provide legal protection for victims but have not been fully realized. Such as the Electronic Information and Transactions Law which was created in order to protect victims only goes as far as the stage of sentencing the perpetrators. However, the protection needed by victims in the form of post-recovery treatment is very necessary. For this reason, the government in order to provide protection for victims has attempted to formulate a law that has now been passed, namely Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which is said to be a breakthrough in legal protection for victims who have regulated electronic-based sexual crimes in Article 14 paragraph (1) with a maximum prison sentence of 4 years and/or a maximum fine of IDR 200,000,000.

In addition, this law is said to be able to provide protection in the form of post-recovery treatment. From the problems above, the author is interested in conducting research on: Legal

¹ Theresia Yulita Girsang, *Tinjauan Kriminologi Terhadap Kejahatan Cyberporn*, 2022, Universitas Lampung, Bandar Lampung, hlm 4.

² Komnas Perempuan, 2023, *Kekerasan Terhadap Perempuan di Ranah Publik dan Negara: Minimnya Perlindungan dan Pemulihan*, Jakarta, hlm xxiv.

³ Sebar Video bugil Mantan Pacar, Pria di Aceh Utara Diringkus Polisi <https://www.acehonline.co/news/sebar-video-bugil-mantan-pacar-pria-di-aceh-utara-diringkus-polisi/index.html> diakses pada tanggal 20 April 2024 pukul 21.48 WIB.

⁴ Ikmal Firmansyah, "Perlindungan Hukum Bagi Korban Tindak Pidana Penganiayaan dan Perusakan Barang Menurut Kajian Viktimologi (Analisis Putusan Pengadilan Negeri Banda Aceh, Nomor 140/Pid.B/2020/PN Bna)", Banda Aceh: Fakultas Syari'ah dan Hukum Universitas Islam Negeri Ar-Raniry, 2022, hlm 1.

Protection for Women Victims of Revenge Pornography Carried Out Through Cybercrime.

Previous research that became the author's consideration, namely, first, research conducted by Maiswa Nur Inayah Ridwan entitled: Legal Review of the Criminal Act of Disseminating Pornographic Content Revenge Porn (Revenge Pornography) in Laws and Regulations in Indonesia (Study of Decision Number 1005 / PidSus / 2020 / PN.Rap), which is the main object of the study is the decision of the Court Number 1005 / PidSus / 2020 / PN.Rap and what is studied is the judge's consideration in the decision with the results of the discussion that the judge used the ITE Law and not the Pornography Law⁵, Meanwhile, in the author's research, the focus is on how the protection provided by the Law in Indonesia focuses mainly on whether Law Number 12 of 2022 has accommodated protection for victims, as well as post-recovery handling.

Another research was conducted by Witasya Aurella Selaeman, with the title of the thesis Revenge Porn in the Perspective of Islamic Criminal Law and Positive Law (Analysis of Decision Number 1288/Pid.Sus/2017/PN BJM), the results of this thesis research are the considerations and application of the judge's law in decision Number 1288/Pid.Sus/2017/PN BJM that the defendant was proven legally and convincingly to have committed a criminal act against morality and was subject to Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Jo. Article 45 paragraph (1) of Law Number 19 of 2016. Revenge Porn in the perspective of Islamic criminal law is included in the crime of qurb al zina or approaching zina⁶. Both studies conducted by the author have similarities in discussing the crime of revenge pornography, but the difference is that the author focuses on the protection received by the victim along with post-recovery treatment.

2. RESEARCH METHODS

The issues studied are legal protection for women victims of revenge pornography carried out through cybercrime and further studies on the TPKS Law and the recovery that victims are entitled to. Normative Legal Research is a research method on legal regulations both from the perspective of the hierarchy of legal regulations (vertical) and the harmonious relationship of laws (horizontal)⁷.

The approach method used by the author in this study is the statute approach or juridical approach, namely research on legal products.⁸ This statute approach is carried out to examine all laws and regulations related to the research to be studied, the conceptual approach, and the historical approach. The statute approach is also carried out to study whether there is consistency and conformity between one and the other.⁹ This study was conducted by examining the provisions related to legal protection for women victims of revenge pornography carried out through cybercrime, as well as further protection in the TPKS Law and post-recovery handling of victims.

3. RESEARCH RESULTS AND DISCUSSION

a. Legal Protection for Women Victims of Revenge Pornography Carried Out Through Cybercrime

According to Philipus M. Hadjon, legal protection is protection of dignity and honor, as well

⁵ Maiswa Nur Inayah Ridwan. "Tinjauan Hukum Terhadap Tindak Pidana Penyebaran Konten Pornografi Revenge Porn (Pornografi Balas Dendam) Dalam Peraturan Perundang- Undangan di Indonesia (Studi Putusan Nomor 1005/PidSus/2020/PN.Rap)", Makassar, Universitas Hasanuddin, 2019.

⁶ Witasya Aurella Selaeman, 2021, Rvenge Porn Dalam Perspektif Hukum Pidana islam dan Hukum Positif (Analisis Putusan Nomor 1288/Pid.Sus/2017/PN BJM), Universitas Islam negeri Syarif Hidayatullah, Jakarta.

⁷ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, (2008), Kencana, Jakarta, hlm. 23.

⁸ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*. (Bandung : Mandar Maju, 2008),hlm. 92.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet 3, Bayumedia Publishing, Malang, 2006,hlm. 306.

as recognition of human rights owned by legal subjects from arbitrariness.¹⁰ Efforts to combat crime and legal protection for society through criminal policy, namely by formulating laws and regulations by law makers.¹¹

The National Commission on Violence Against Women stated that revenge pornography is the distribution of content with a motive of revenge that damages digital reputation. Revenge pornography is the distribution of pornographic content without the consent of the person in the photo or video as a form of threat, jealousy, revenge, or a feeling of rejection.¹²

The problems faced by women as victims, such as women victims are often considered as the cause or provider of opportunities for criminal acts to occur due to the way they dress, their body language, the way they relate socially, their marital status, their job or because of their presence at a certain time and location.¹³ This causes victims to experience long-term impacts due to the pornographic incidents that happen to them.

Therefore, to provide protection for women who are victims of revenge pornography carried out through cybercrime, several legal regulations have been formed. The following are various regulations that apply in Indonesia relating to revenge pornography and also as an effort to protect victims, including the following:

- 1) Articles 281-282 of the Criminal Code and Article 406 of Law Number 1 of 2023
- 2) Article 27 in conjunction with Article 45 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions
- 3) Article 29 in conjunction with Article 4 paragraph (1) of Law Number 44 of 2008 concerning Pornography
- 4) Article 14 paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

If we look at some of these regulations, for example, in the Criminal Code, it does not cover extensively the acts of revenge pornography carried out through cybercrime, it does not cover sexual violence in revenge pornography so it is considered less effective. Furthermore, the ITE Law and the Pornography Law have the potential to victimize victims and are only oriented towards sentencing. In, the TPKS Law has not been fully implemented or used by law enforcement.

b. Legal Protection for Women Victims of Revenge Pornography Committed Through Cybercrime in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

Revenge pornography can be categorized as a form of Electronic-Based Sexual Violence. In fact, just like sexual violence that occurs in the real world, the impact can be felt directly and long-term by the victim. A long series of physical, psychological and social impacts must also be borne by victims of revenge pornography.¹⁴

Furthermore, the government formulated Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence which is said to be able to provide protection for victims, as well as provide rights to handling, protection and recovery of victims, this is in terms of returning victims to their

¹⁰ Perlindungan Hukum: Pengertian, Bentuk, dan Cara Mendapatkan Perlindungan Hukum, diakses dari <https://www.gramedia.com/literasi/perlindungan-hukum/>, Pada Tanggal 28 Mei 2024, Pada Pukul 23.00 WIB.

¹¹ Sudirman Suparmin. 2020, *Hak-Hak Korban Dalam Penegakan Hukum Pidana*, Cv Manhaji, Medan, hlm 64.

¹² Putri Inka Lestari, Tinjauan Hak Asasi Manusia Mengenai Perlindungan Hukum Bagi Perempuan Korban Revenge Porn, *Civilia : Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan*, Semarang, Vol. 2, No. 5, 2023, hlm 2

¹³ Fransiska Novita Eleanore Eleanore, FN Zulkifli Ismail, Ahmad, dan Melanie Pita Lestari, *Hukum Perlindungan Anak dan Perempuan*, Madza Media, Malang, 2021, hlm 236.

¹⁴ Melia Sintia, T. Erwinsyahbana, Perlindungan Hukum Terhadap Korban Pornografi Balas Dengan Motif Balas Dendam Sebagai Bentuk Kekerasan Seksual Berbasis Elektronik, *Buletin Konstitusi*, Volume 4, Nomor 2, November 2023 Hlm 102.

original condition. This law has regulated electronic-based sexual violence (KSBE) or Online Gender-Based Violence (KGBO) where revenge pornography is also included in the realm of electronic-based sexual violence or online gender-based sexual violence. The regulation regarding KSBE is stated in Article 14 paragraph 1.

Article 14 paragraph (1) letter a states that recording and/or taking pictures or screenshots containing sexual content is done outside the will or without the consent of the person who is the object. However, in some cases or most of them, taking pictures or recording is done with the consent of both parties. This causes there to still be a gap in the article. However, if we look at Article 4 paragraph (2) letter d, it states that the crime of sexual violence also includes acts that violate morality that are contrary to the will of the victim. In this case, the victim does not want the distribution of his/her immoral videos or images, so the perpetrator's actions in spreading immoral material outside the will of the victim already fulfill the formulation of this article. However, in certain situations, recordings or screenshots are taken with the consent of the victim.

The material content regarding the crime of revenge pornography, Law Number 12 of 2022 concerning the Crime of Sexual Violence still has legal loopholes and overlaps between existing articles. So, if we look again at the formulation in Article 14 paragraph (1), it has not fully accommodated legal protection for women victims of revenge pornography. This is because the formulation is still too general while revenge pornography has a fairly different modus operandi. However, in the formulation regarding handling, protection and recovery which is intended as protection for the rights of victims, it has been formulated very well, where this has not been accommodated in previous laws relating to revenge pornography. In practice in the field, many law enforcement officers refuse to use the Law on Sexual Violence. This causes the companion to face a big challenge in encouraging the implementation of the TPKS Law in the field. It has been recorded that there are 3 LBH APIK offices in Medan, Jakarta and West Java that receive data regarding Law Enforcement Officers who do not want to accept reports, due to minimal evidence. So that the victim does not continue it to the legal route. Meanwhile, in article 24 of the Law on Sexual Violence, there is valid evidence that can be used, including:¹⁵

- 1) Evidence as referred to in criminal procedure law
- 2) Other evidence in the form of electronic information and/or electronic documents as regulated in the provisions of laws and regulations; and
- 3) Evidence used to commit a crime or as a result of a Sexual Violence Crime and/or objects or goods related to the crime.

If we look at it, what happens in the field is not as expected. Then if we relate it to Soerjono Soekanto's statement, then the law enforcement factor is not fulfilled. Law enforcers prefer to use articles in the ITE and Pornography Laws because this case is related to pornography so that the victim's rights have not been fully fulfilled. Therefore, an order is also needed to use articles in the TPKS Law to fulfill the rights of women as victims.

Therefore, according to the author, it would be better if the TPKS Law was revised again by adding in-depth elements regarding the crime of revenge pornography and/or there needs to be harmonization or synchronization between the ITE Law and the TPKS Law so that even though the perpetrator is sentenced based on the ITE Law, the victim will still get his rights through the TPKS Law.

The community is also a factor in law enforcement, instead becoming a party that contributes less in helping victims in obtaining their rights. This is because the community makes the victim a sexual object that is to blame for the events that happened to her, this is also related to the still strong patriarchal culture. Although there are legal developments such as the TPKS Law

¹⁵ Prianter Jaya Hairi, Marfuatul Latifah, Implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual, Negara Hukum, Jakarta, Vol. 14, No. 2, November 2023, Hlm 170.

which provide hope, there is still much room for improvement in handling cases, protecting victims, and preventing such crimes in the future. Collective awareness and responsible actions from all parties are needed, starting from law enforcement, the community, to individuals to create a safe environment and respect the human rights of everyone. Because in principle, no matter how well the law is designed, if the party implementing the law does not help in realizing the law, the expected legal protection will not be implemented. So awareness is needed for each party so that the protection of the victim's rights is implemented.

c. Post-Recovery Handling of Female Victims of Revenge Pornography Carried Out Through Cybercrime

So many negative reactions from society towards victims can have psychological consequences or impacts on women as victims. Continuous situations that impact the emotions of the victim such as insults to their dignity and self-esteem, disturbances that occur in their lives and being isolated from their surroundings, then this will have an impact on the psychological and physical well-being of the victim.¹⁶

Based on this, protection for victims becomes very important and needs to be considered, because the suffering of the victim will not necessarily end with the imposition of punishment on the perpetrator or until the end of the sentence served.¹⁷ So it can be concluded that the consequences of revenge pornography are very dangerous for victims. This is because it causes psychological impacts or long-term damage to mental health. A disturbed mentality will eventually cause illness to a person himself. Therefore, treatment is needed in the form of returning the victim to its original state.

According to legal experts, the substance of criminal law that has been in force in Indonesia has focused only on the perpetrators while the rights of the victims have been neglected.¹⁸ However, after Law Number 12 of 2022 concerning the crime of sexual violence was passed, the parties who were involved in this case could be restored by efforts to restore the physical, mental, spiritual and social conditions of the victims. Based on Article 63, the Panel of Judges is obliged to consider the recovery of the victim in the decision as regulated in the law. This can be seen in Article 70 paragraphs 1-3, regarding the recovery that is the victim's right, including:

- 1) Medical rehabilitation
- 2) Mental and social rehabilitation
- 3) Social empowerment
- 4) Restitution and/or compensation
- 5) Social reintegration

Recovery for victims can be provided before and during the trial process begins, such as Provision of health services for physical recovery, Psychological strengthening, Provision of information about victims' rights and the trial process, Provision of information about recovery services for victims, Legal assistance, Provision of accessibility and adequate accommodation for victims with disabilities, Provision of transportation assistance, consumption, temporary living expenses, and decent and safe temporary housing, Provision of spiritual and spiritual guidance, Provision of educational facilities for victims, Provision of population documents and other supporting documents needed by victims, Right to information in cases where prisoners have completed their sentences, Right to the deletion of sexually charged content for cases of sexual violence by electronic means.

The implementation of this recovery is mandated to the UPTD PPA in accordance with Article 76 paragraph (3), namely: Receiving reports or outreach to victims, Providing information

¹⁶ Sahira Azzahra, dkk. Kajian Literatur: Perlindungan Hukum Terhadap Korban Revenge Porn, Jurnal Dunia Ilmu Hukum dan Politik, Vol. 2, No.2, April 2024, Hlm 273.

¹⁷ John Kenedi, *Perlindungan Saksi dan Korban, Pustaka Pelajar*, Yogyakarta, 2020, hlm 74-77.

¹⁸ Asni, *Perlindungan Perempuan Dan Anak Dalam Hukum Indonesia*, Alauddin University Pers, Gowa, 2020, hlm 191

on Victim Rights, Facilitating the provision of health services, Facilitating the provision of psychological strengthening services , Facilitating the provision of psychosocial services, Social rehabilitation, social empowerment, and social reintegration, Providing legal services, Identifying economic empowerment needs, Identifying the needs of victims with disabilities, Coordinating and cooperating on the fulfillment of victim rights with other institutions, Monitoring the fulfillment of victim rights by law enforcement officers during the judicial process.

In a study conducted by Deby Rahmatul Fitri, there are several forms of protection for victims of crime that are commonly provided, including the following:¹⁹

- 1) Provision of Restitution and Compensation
- 2) Counselling, in general this protection is given to victims as a result of the emergence of negative psychological impacts from a crime
- 3) Medical Services or Assistance This service is provided to victims who suffer medically as a result of a crime.
- 4) Legal Aid Legal aid to victims of this crime must be provided whether requested or not by the victim.

Ideally, protection for victims in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence is in accordance with what is desired by victims, especially victims of revenge pornography. For handling, protection and recovery of victims are obtained when reporting by the victim, the victim's family, the victim's guardian or the community to law enforcement officers, government agencies, or non-governmental agencies that handle Criminal Acts of Sexual Violence.

In reality, not everyone can immediately obtain the rights contained in the Law on Sexual Violence. In practice, the understanding of law enforcement officers (APH) regarding Law Number 12 of 2022 concerning Sexual Violence is still very low. When there is a TPKS case, not all police have implemented Law Number 12 of 2022 concerning Sexual Violence on the pretext that there are no implementing regulations, even though the implementation of the law does not need to wait for the issuance of implementing regulations.²⁰

Public understanding of rights and everything regarding victims is still relatively low. This is because the discussion and understanding that exists in general is still always around the punishment of perpetrators or the enforcement of criminal law in the criminal justice system based on human rights.²¹

So from the explanation above, it can be concluded that recovery for victims has been greatly accommodated in Law Number 12 of 2022 concerning Sexual Violence. However, legal instruments such as law enforcers and the public do not yet fully understand the Law on Sexual Violence. Law enforcers such as the police have not yet positioned themselves in the perspective of the victim. Likewise, the community that is still strong with its negative stigma against women causes the community to contribute less in handling post-recovery for victims. So social reinstatement is indeed very necessary in order for victims to be able to return to the scope of society without burden and feel free. By restoring the victim's social function in society and making victims able to return to their normal activities in the midst of society.

¹⁹ Deby Rahmatul Fitri , Pengaruh Victimblaming (Penyalahan Korban) Tindak Pidana Pornografi Balas Dendam Terhadap Proses Penegakan Hukum Dalam Sistem Peradilan di Indonesia, *JOM Fakultas Hukum Universitas Riau*, VIII, No. 1 Januari - Juni 2021, Hlm 11-12.

²⁰ Dua Tahun Disahkan, UU Tindak Pidana Kekerasan Seksual Masih Belum Punya Aturan Pelaksanaan, diakses dari <https://www.kompas.id/baca/humaniora/2024/03/12/uu-tpks-hampir-2-tahun-diundangkan-peraturan-pelaksana-tak-kunjung-rampung> pada tanggal 29 mei 2024, pada pukul 23.19 WIB.

²¹ Budi Sastra Panjaitan. *Viktimologi Pandangan Advokat*, CV Amerta Media, Jawa Tengah, 2022, hlm 69.

4. CONCLUSION

The results of the above study show that protection for women as victims of revenge pornography carried out through cybercrime can be provided through Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 44 of 2008 concerning Pornography and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence has regulated electronic-based sexual violence, but its regulations do not fully cover the elements of criminal acts of revenge pornography, even so, the TPKS law has accommodated post-recovery handling of victims both during the trial and after the sentencing of the perpetrator. However, because law enforcers have not yet used the TPKS Law and prefer the ITE Law, resulting in victims not receiving post-recovery rights as stated in the TPKS Law, synchronization between existing laws is very necessary so that in addition to perpetrators being prosecuted under the ITE Law or the Pornography Law, victims can also receive recovery rights based on the TPKS Law, or further in-depth expansion is needed regarding the elements of the crime in the crime of revenge pornography.

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