Online-Based Sexual Violence Analysis in Legal Construction in Indonesia

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Abstract
During the pandemic, most of the community's activities were carried out at home by doing work from home and school from home. At the beginning of 2021 internet users in Indonesia reached 202.6 million people or 73.3% of the total population of Indonesia. The more massive communication via online does not rule out the greater possibility of online gender-based violence (KBGO) in social media. In the last 3 years, cases of online-based sexual violence (KSBO), which is a form of KBGO, have continued to increase in Indonesia, including during the Covid period. From 2019 and 2020, Komnas Perempuan has recorded 455 cases of online-based violence against women reported through victim service agencies. The existence of the Law on Criminal Acts of Sexual Violence (UU TPKS) is important to protect sexual violence, including KSBO. The TPKS Law is expected to adequately regulate KSBO not only in its form but also in the protection of victims of KSBO. This research uses normative juridical research with a qualitative case approach. Based on the results of the research, there are 9 forms and patterns of online-based sexual violence, which consist of: 1) Undesirable production of sexual-nuanced Electronic Material/Information; 2) Modification of sexually nuanced material/information; 3) Threats of Dissemination of Sexual Material/Information; 4) Dissemination of material/electronic information with sexual nuances; 5) Selling material/electronic information with sexual nuances; 6) Sexual Harassment; 7) Sexual Exploitation; 8) Sexual Bullying and 9) Sexual stalking. This KSBO mode varies; both the media used and the purpose/motivation of the actions taken. The complexity of handling KSBO cases is caused by layered and continuous barriers in assisting victims of online-based sexual violence.

Keywords: analysis, handling, violence, sexual, online

INTRODUCTION
The use of the internet for social media is increasingly widespread and rapid. Especially during the pandemic that hit Indonesia, where most of the community's activities were carried out at home by doing work from home and school from home. At the beginning of 2021 internet users in Indonesia reached 202.6 million people or 73.3% of the total population of Indonesia. The more massive communication via online does not rule out the greater possibility of Online Gender-Based Violence (KBGO) in social media.

Based on Komnas Perempuan data in the 2021 CATAHU, it was noted that in 2020 there was a spike in KBGO cases, which was around 940, while in 2019 there were 241 cases. In the last 3 (three) years, cases of Online-Based Sexual Violence (KSBO), which is a form of KBGO, have continued to increase in Indonesia, not least during the Covid 19 period. From 2019 and 2020, Komnas Perempuan has recorded 455 cases of violence against women. online-based women reported through victim service agencies. The data also states that the spread of non-consensual intimate content has the highest number throughout 2020.

In addition, other cases that have the highest number are the threat of distribution of personal photos or videos (malicious distribution), the behavior of manipulating minors online (online grooming), the distribution of intimate photos or videos without permission (non-consent intimate distribution), and cyber harassment. According to Zhafira (2021) the report received by SAFENet in 2020 in order of the highest number of reports, namely the spread of non-consensual intimate content or revenge porn. The second order is account impersonation or impersonification. The third order, non-consensual dissemination of personal data or doxxing. Fourth, someone's exposure to indecent content or online exhibitionism.
The existence of Law No. 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS) which was passed on May 9, 2022 is important to protect sexual violence, including KSBO. The TPKS Law is expected to adequately regulate KSBO not only in its form but also in the protection of victims of KSBO. The TPKS Law includes the latest forms of KSBO and ensures that victims of KSBO are not criminalized as there are a number of victims of sexual violence who are convicted or criminalized by Law no. 44 of 2008 concerning Pornography and Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE), because they are considered to be defaming or participating in disseminating or transmitting or making accessible electronic information and/or electronic documents in the form of images, photos, sounds, text, symbols and other forms of electronic documents that contain decency.

Based on the information from the background described above, a number of problems can be identified which will later be used as material for conducting a study on the Analysis of Online-Based Sexual Violence Handling in Legal Construction in Indonesia.

METHOD

The research method used in writing this article is qualitative normative juridical research, normative juridical research is research that examines and analyzes laws and regulations relating to the issues being raised. Normative juridical research is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. The normative view is a framework of thinking about the law, its validity, application, formation and enforcement must be based on all forms of legislation governing the law.

Based on Efendi (2018) the approaches used in this type of research include the Legislative Approach, Conceptual Approach, and Case Approach. The statutory approach is carried out by reviewing several laws or regulations that are related to the issues at hand. The conceptual approach is implemented when the researcher uses the approach of doctrines or the opinions of experts who develop in the science of law. Case Approach This approach is carried out by conducting studies on cases related to the legal issues faced. The research was carried out for a period of 6 months from December 2021 to May 2022 using the focus group discussion method involving KSBO case facilitators. The results of the focus group discussions were then analyzed by sorting out the form and mode of KSBO and comparing the experience of handling it with the applicable laws and regulations.

RESULTS AND DISCUSSION

a. Forms and Modes of Online-Based Sexual Violence (KSBO)

Previous research conducted by Sugiyanto (2021) since 2017, there are at least 8 types of online gender-based violence reported to Komnas Perempuan, namely approaches to deceiving (cyber grooming), harassment with online media (cyber harassment), account hacking (hacking ), illegal content (illegal content), violation of one's privacy (infringement of privacy), threats of personal photos or videos (malicious distribution), defamation (online defamation), and online recruitment (online recruitment).

This research supports the research conducted by Sugiyanto (2021 where during the last 4 years from 2018 to 2021 as many as 783 cases of online-based sexual violence handled by LBH APIK Jakarta, 9 (nine) forms and patterns of online-based sexual violence were found. The shapes and patterns are:
1. Recording of images (photos and videos) without knowing and/or without permission where recordings are used or can be used to threaten, frighten or cause someone to do what they expect and including distribution through social media, cellphone applications, email or other electronic media.

2. Threats of spreading sound and/or images (photos and videos) with sexual nuances such as images of being half naked, naked, hugging, kissing or sexual intercourse through social media, mobile phone applications, email or other electronic media.

3. Dissemination of sounds, images, photos, videos with sexual nuances such as images of being half naked, naked, hugging, kissing, and/or having sexual relations through social media, mobile phone applications, email or other electronic media.

4. Modify images, sounds, photos, texts, videos or other electronic documentation so that the document contains pornography, such as being half naked, naked, hugging, kissing, or having sexual intercourse.

5. Sexual harassment in the form of sending voice, writing, pictures, photos, emoji/other symbols, videos and other forms of movement to other parties through mobile phone applications (HP), email, social media or other forms of electronic media. This act can take the form of a sexual joke that specifically targets certain people, causing discomfort, disturbance and pressure.

6. Selling someone's picture, photo or video showing a semi-nude, naked, or sexual relationship to an adult film or video account. This act is known when electronic information has been spread

7. Sexual exploitation
   a) Photograph, record or document certain sexual activities forcibly or in which a person is unable to give consent;
   b) Use sexually suggestive images, photos or videos to persuade someone to threaten someone to do what they want; or sexual exploitation is not an act that stands alone and can be an accumulation of various other forms of KSBO. Sexual exploitation has the dimension of the benefits obtained by the perpetrator from the act

8. Sexual bullying
   a) The form of sending or posting incorrect information, sensitive, personal information (such as photos, cellphone numbers, home addresses), harmful or malicious information or other information
   b) Taking someone's identity and pretending to be that person to convey false information;
   c) Threatening to perform acts that have a sexual connotation

9. Online stalking that has a sexual nuance or intent. This stalking is even informed that it causes discomfort, annoyance, and fear.

This KSBO mode varies; both the media used and the purpose/motivation of the actions taken.

**b. Handling Online-Based Sexual Violence (KSBO) in Indonesian Legal Construction**

Based on the mentoring experience carried out by LBH APIK Jakarta, online-based sexual violence case handling faces various forms of problems at all stages in the criminal justice system in Indonesia. These problems include investigations and investigations by the police, prosecution by the prosecutor's office and in the trial process in court, but most of the cases handled by LBH APIK Jakarta stop at the police level. In the last 2 (two) years, out of a total of 724 KSBO cases in 2020 and 2021, only 3 KSBO cases have continued until the court.
The following are the problems experienced by victims and their assistants in handling cases of online-based sexual violence:

a. Report/complaint stage
1) The examination of KSBO victims was not carried out by the Renakta Unit or UPPA, but male investigators in the Cyber Crime Unit, so that the majority of KSBO victims were women who felt uncomfortable and reluctant to continue their case:
2) The report was not followed up by the police, because the evidence was deemed insufficient or no longer available.
3) The police do not take the victim's report seriously because the case is considered normal or a form of "fad" or just delinquency.
4) Victims and their companions are asked to search for, find, and submit evidence and witnesses requested by the police, including expert witnesses.
5) The victim is afraid to be reported back by the perpetrator, so the victim withdraws the report/complaint.
6) Police officers are still experiencing many difficulties in finding and finding digital evidence, considering that the technology and human resources to support digital forensic efforts by the police are still very limited.

b. Mediation
During the last 2 years, from 2020 to 2021, there were 140 KBGO cases that were mediated or the victims chose mediation. The following are the problems experienced by victims and their companions related to the KSBO mediation;
1) The police tend to direct the victim not to continue the case and/or choose the path of mediation or kinship with the perpetrator for the following reasons:
   a) It's difficult to process if the perpetrator has deleted the impression
   b) Lack of evidence
2) There are still threats and verbal pressure from the police that in the case of ITE victims can also be punished. This is because of the assumption that the perpetrator's actions were triggered by the presence of sensual information that was made consensual, so that it could make the victim a contributing party to pornography;
3) Perpetrators were informed by investigators about the possibility of using the Pornography Law to report back victims. This is a threat so that the victim is willing to mediate;
4) When mediation has taken place, there is no guarantee that the perpetrator will not take further action;
5) Legal assistants are not involved; Investigators often convey that the mediation process is not attended by legal assistants or even not known by legal assistants; This has implications for the relatively weak position of the victim in front of the perpetrators and the police.

c. In the process of investigation and investigation
1) There is no protection of personal data on the victim's belongings such as cellphones and laptops that were confiscated as evidence
2) The locus of the incident and the jurisdictions are different in places/regions (between countries, between provinces and between districts/cities), so that between police institutions, they are throwing authority over each other.
3) Difficulty in presenting expert witnesses due to limited case handling costs.
4) There is no protection against risks that are obtained in the long term considering that electronic information cannot be deleted immediately and it is possible that information has been stored by other parties

Many victims of KSBO finally choose not to report their case to the police, or leave the case alone, or choose to change their residence, or just choose the mediation route. Another problem that arises is the difficulty of finding witnesses and strong evidence, so the cases reported by the victims are not followed up by the police. In the case of KSBO,
which has strong enough evidence, the police also do not immediately proceed to the investigation stage. In many cases, the victim will be asked to undergo mediation with the perpetrator and advised not to proceed with the case.

The police argued that the mediation was carried out in accordance with the Joint Decree between the Minister of Communication and Information of the Republic of Indonesia, KAPOLRI and the Attorney General of the Republic of Indonesia concerning Guidelines for Criteria for Implementation of Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE). On the other hand, in cases of criminalization of KSBO or convicted victims, the police tend not to use mediation mechanisms or restoration justice as stated in the joint decree. The police immediately took the case to the next stage.

The results of mediation in the KSBO case include a letter of agreement or a statement containing: 1) apology; 2) remove all publications of images and sounds that harm the victim; 3) promise not to repeat his actions; and 4) compensation for part of the victim’s recovery costs.

In addition, the victims and their companions are still having difficulty getting expert witnesses that investigators asked for to victims. The lack of funds, as well as the availability of experts who understand the context of KSBO and have a victim and human rights perspective, make it difficult for victims and their assistants to find the experts they want. Another problem that occurs is the throwing of areas of investigation authority (jurisdiction) between police institutions due to differences in the area that is the locus of the incident, the residence of the perpetrator and the residence of the victim.

During the Covid-19 pandemic, KSBO complaints have actually increased. In the last 3 years, LBH APIK Jakarta noted that KBGO cases including KSBO were consistently included in the 3 biggest cases. The policy of limiting social activities makes victims have many obstacles in seeking help. Victims find it difficult to report directly to service institutions or hospitals and to the police, get face-to-face counseling (physical meetings), limited reports to the police, handling time including the investigation and investigation process is getting longer, access to case information is getting more difficult, enforcement of requirements Covid-19 free for safe house/shelter services, enforcement of police report requirements to get protection from LPSK, while police reports are not easy to get for victims during the Covid-19 pandemic. The police are also not ready to implement a virtual or online reporting/complaint mechanism such as a trial in court.

Thus, the victims and their companions face various obstacles from reporting and investigations which affect the case and cannot proceed to prosecution and examination at trial in court.

Barriers to Case Handling in the pre-prosecution and prosecution process by the Public Prosecutor are related to the attitude of the public prosecutor who tends not to view the importance of the victim getting information about the case being processed. The Public Prosecutor does not interact with the victim for the purposes of the prosecution, including not informing the victim and her companion of the charges and demands. Even if in the end the case goes to court, the justice system becomes full of risks and hurts the victims of KSBO.

Barriers to handling cases at trial for victims of KSBO are: a) examination of victim witnesses and trial in court is conducted openly to the public, b) questions from judges and attorneys for perpetrators who still blame the victim, c) use of articles of claim and results of decisions using UU ITE with a low penalty, d) the decision does not cover efforts to restore good name or erase the digital footprint of sexual violence.

In accessing legal assistance and/or assistance services from service providers or legal aid organizations (OBH), victims of KSBO also still experience various challenges. These challenges arise from the socio-economic conditions of the victims, concerns about the implementation of the ITE Law, as well as the situation in the handling of KSBO cases that have not protected the rights of victims. These challenges make KSBO victims lose their ability to access or continue the assistance they get, both legal (litigation) and non-legal (non-litigation) assistance.
These challenges include: 1) a long criminal legal process that requires mental and financial readiness, 2) the financial capacity of the victim (poor/poor), while there are additional costs for securing evidence and no financial support for victims of this need, 3) confiscation of communication tools which are the only ones owned by the victim such as cellphones and laptops as evidence, resulting in a breakdown in communication with the companion, and 4) pressure from parents and family not to report the case to the police or to the service provider agency, because it is considered that the case will get bigger or viral or will be dismissed from work or from school, so the victim does not want to report or withdraw from assistance.

Special Obstacles to Facilitators in Providing Assistance The obstacles experienced by facilitators in providing assistance to victims of sexual violence mostly arise from law enforcement officers or agencies, especially from the police and courts.

In handling cases of online-based sexual violence, police officers, prosecutors and courts have a tendency to dislike or hinder or make it difficult for the presence of legal assistants to provide assistance to victims. Efforts used by law enforcement officers to make it difficult or hinder the assistants include the following ways:

a. Put pressure on the victim not to use a companion or lawyer from a service provider or legal aid organization such as LBH APIK Jakarta, because it is considered that it will prolong/impede the handling of the case and increase costs.

b. Ask the victim to appear before law enforcement officers without the presence of a companion or lawyer or without accompanying notice.

c. Conducting mediation between the victim and the perpetrator without notification and the presence of the victim's companion or lawyer. The police officers suddenly notify the victim's companion or lawyer that the case has been withdrawn because there has been mediation and an agreement with the perpetrator.

d. When providing assistance or requesting information on the progress of a case, law enforcement officers always ask for a power of attorney from the victim, a letter of assignment and/or an identity card/identification card or other evidence indicating that the person concerned is the victim's companion.

e. Enforce the conditions for assistance to companions the same as a lawyer or legal representative

f. Information regarding the charges or demands of the Public Prosecutor is difficult to obtain by the companion or victim, even though the assistant has shown a power of attorney and identity card as a companion.

Law No. 12 of 2022 concerning the Crime of Sexual Violence (UU TPKS) which was passed on May 9, 2022 in Article 14 regulates a special article on KSBO with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). If this electronic-based sexual violence is carried out with the intention of extorting or threatening, coercing, misleading and/or deceiving then the threat is a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million). rupiah).

Article 16 paragraph (2) of the TPKS Law, judges may impose additional penalties in the form of: revocation of child custody or revocation of pardon; announcement of the identity of the perpetrator; confiscation of profits and/or assets obtained from criminal acts of sexual violence. The TPKS Law also regulates the provision of rehabilitation for perpetrators consisting of medical and social rehabilitation. From the experience of mentoring LBH APIK psychosocial rehabilitation is needed especially if the perpetrator is still a child.

Article 24 of the TPKS Law has begun to include various evidence in the form of electronic information or electronic documents as regulated in the provisions of the legislation, including evidence of witness statements, namely the results of examination of Witnesses and/or Victims at the investigation stage through electronic recording.
CONCLUSION

Based on the results of the research that has been described, it can be concluded that there are 9 (nine) forms and patterns of online-based sexual violence, which consist of: 1) Unwanted production of sexual-nuanced Electronic Material/Information; 2) Modification of sexually nuanced material/information; 3) Threats of Dissemination of Sexual Material/Information; 4) Dissemination of material/electronic information with sexual nuances; 5) Selling material/electronic information with sexual nuances; 6) Sexual Harassment; 7) Sexual Exploitation; 8) Sexual Bullying and 9) Sexual stalking. This KSBO mode varies; both the media used and the purpose/motivation of the actions taken.

The problems experienced by victims and assistants in handling cases of online-based sexual violence cases occur at the reporting or complaint stage, mediation stage and the stage of the investigation and investigation process. The obstacles experienced by the facilitators in providing assistance to victims of sexual violence mostly arise from law enforcement officials or agencies, especially from the police and courts.

The attitude of law enforcement officers is increasingly felt in the process of reporting and investigating cases which tend to lead to mediation without taking sides with the victim, and if the case continues, the victim will be burdened with evidence. The special attitude towards the companion who does not consider the important role of the companion is felt like encouraging the victim not to be accompanied by a companion, case information is not conveyed to the facilitator and the facilitator is not involved in the mediation process. Companions tend to be perceived as a nuisance rather than those who help victims. Facilitators are vulnerable to criminalization given the limited regulation regarding the protection of companions.

During the investigation, the officers were still using the ITE Law with questions still blaming the victim and the verdict did not cover efforts to restore reputation or erase digital traces of sexual violence. With the existence of the TPKS Law which regulates special articles on KSBO, criminal threats, evidence, restitution for victims, and rehabilitation for perpetrators.

From this research, it is suggested that law enforcement officers, investigators, prosecutors and judges are prohibited from showing an attitude that demeans the dignity of the victim as regulated in the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Prosecuting Women in Facing the Law and Prosecutors' Guidelines Number 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases in addition to implementing the TPKS Law which regulates special articles on KSBO, criminal threats, evidence, rehabilitation for perpetrators, and restitution for perpetrators.

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