



INNOVATIVE: Journal Of Social Science Research

Volume 3 Nomor 5 Tahun 2023 Page 5715-5723

E-ISSN 2807-4238 and P-ISSN 2807-4246

Website: <https://j-innovative.org/index.php/Innovative>

Legal Review of Legal Regulations Regarding Gender-Based Violence

Andi Inar Sahabat^{1✉}, Karmila Damariani Radjak², Andi Nazir Sahabat³, Novarolina

Pulukadang⁴, Abdur Rozak⁵, Muhammad Umar Kelibia⁶

(1),(2) Universitas Nahdlatul Ulama Gorontalo

(3),(4) Universitas Ihsan Gorontalo

(5) Universitas Budi Luhur

(6) IAIN Ambon

Email: chachawoman@gmail.com^{1✉}

Abstrak

Tujuan penelitian ini adalah untuk mengetahui bagaimana pandangan masyarakat terhadap KBGO dan mengetahui apa saja kendala lembaga penegak hukum dalam menangani KBGO dan bagaimana efektivitas UU ITE dan UU TPKS. Metode penelitian yang digunakan dalam penelitian ini adalah metode penelitian *sosio-legal*. Penelitian *sosio-legal* adalah perpaduan antara *legal research* dan *social research*. Hasil penelitian menyimpulkan bahwa keterbatasan pemahaman KBGO menjadi salah satu kendala dan tantangan dalam penyelesaian kasus KBGO selain kendala dari Lembaga penegak hukum. Dimana keduanya berpengaruh dalam keefektifitas UU ITE dan UU TPKS.

Kata Kunci: *Aturan Hukum, Efektivitas, KBGO*.

Abstract

The aim of this research is to find out how the public views KBGO and find out what obstacles law enforcement agencies have in handling KBGO and how effective the ITE Law and TPKS Law are. The research method used in this research is the socio-legal research method. Socio-legal research is a combination of legal research and social research. The research results concluded that limited understanding of KBGO is one of the obstacles and challenges in resolving KBGO cases in addition to obstacles from law enforcement agencies. Where both influence the effectiveness of the ITE Law and the TPKS Law.

Keywords: *Legal Rule, Effectiveness, KBGO*.

INTRODUCTION

The development of information technology plays an important role in the development of communication methods and community activities. This phenomenon occurs throughout the world, including Indonesia (Setiawan, 2018). Especially during the COVID-19 pandemic which forces people to meet each other online and face to face, this has given rise to a form of violence, namely Online Gender Based Violence (KBGO). Gender-directed violence and/or sexual violence facilitated by Internet technology.

In 2021, SAFEnet received 677 KBGO cases which were divided into two major categories, namely Non-Consensual Intimate Images (NCII), and complaints other than NCII. NCII was 508 cases or 75%, and complaints other than NCII were 169 cases or 25%. For NCII, the reason is related to 47.2% (240 cases), the motive is unknown, related to relationship motives is 28% (142 cases), followed by sextortion at 22.2% (113 cases) and lastly is the potential for it to occur in the future a number of 2.6% (13 cases). The forms of KSBG that are reported to KSBG Actions identified other than NCII are sexual harassment, doxing, invasion of privacy, impersonation and others. The highest age categorization of KSBG victims is over 18 years, in East Java itself, namely 42.

The ratification of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), said to have the ability to prevent and eradicate criminal violence in all its forms. Before the TPKS Law was implemented, victims of sexual violence did not receive justice, protection and rehabilitation that were integrated in the criminal law system. The TPKS Law exists with the aim of initiating trials in order to protect victims and punish perpetrators of sexual violence, which is regulated in special provisions of the criminal law. However, the TPKS Law and ITE Law have not optimally handled KBGO because, first, the TPKS Law still requires more nuance in the definition and details of electronic sexual violence. Second, the ITE Law does mention electronic sexual violence but is limited to content distribution and does not provide guarantees of safety and protection for victims and also does not fully consider gender perspectives.

KBGO is a complex issue because it concerns the attitudes and psychology of society which perpetuate the existence of patriarchal hegemony. KBGO is a consequence of the widespread use of technology without ethical understanding. However, this change in digital lifestyle has not only had a positive but also a negative impact on society, especially netizens. One of them is the rise in online gender-based violence (KBGO). This behavior includes endangering a person because it attacks gender and sexuality through digital channels, including social media. In other words, acts of gender-based violence online often occur because of violations of privacy or because of actions that are not based on the consent

(consensus) of one or more people at the same time (Eko Riyadi, 2020).

Legal protection for victims of online gender-based violence is a mandate from the constitution, Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that: "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination". The state and government have a constitutional obligation to provide protection for all Indonesian citizens, as mandated by Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, that: "The protection, promotion, enforcement and fulfillment of human rights is the responsibility of state, especially the government", so that here the protection of victims is included in the issue of protecting human rights in the existing structural system.

The rights and interests of victims who were robbed by criminals must be restored. On the other hand, the perpetrator must also be held accountable for his actions because these actions cause harm to the victim, so that they can provide a deterrent effect. And don't repeat that action again. The law has taken this into account, so that the losses borne by the victim and the responsibility of the perpetrator must be balanced and fair.

Another legal instrument used in resolving cases of acts that attack sexuality in the online realm is Article 27 of the ITE Law which regulates criminal provisions for every person who intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents. which has content that violates decency (Adkiras, 2021). However, there is no further explanation regarding the meaning of politeness as regulated in this article, so it is not appropriate to resolve KBGO cases using the ITE Law. Thus, the ITE Law does not provide additional regulations regarding victim protection mechanisms.

Together with the TPKS Law, it could become a legal framework that specifically regulates sexual violence crimes in Indonesia. The TPKS Law also regulates a number of contents such as types of sexual violence, protection and rights of victims, victim compensation as well as more comprehensive and in-depth KBGO regulations. If it is related to the Revenge Porn case, a form of KBGO, then we see that the TPKS Law has the potential to solve this problem.

Based on this foundation, the next problem that will be studied in this article is the obstacles faced by law enforcement officials in resolving KBGO cases and calculating the effectiveness of the Rule of Law in KBGO cases. The urgency of this research is to determine the level of synchronization and harmonization of legal content in legal regulations that is needed to develop legal regulations for online gender-based violence (KBGO).

RESEARCH METHOD

This research uses socio-legal research methods. Socio-legal research is a combination of legal research and social research (Afandi, 2022). In socio-legal research, it examines the relationship and interrelationship between legal aspects and reality in society. In this context, law is not only seen as an independent or isoteric normative entity, but is also seen as a real part of the social system which is related to other social variables. Researchers will examine legal regulations that can ensnare perpetrators of Online Gender-Based Violence (KBGO) using the RIA method to prevent this violence.

RESULT AND DISCUSSION

Obstacles for Law Enforcement Agencies in Handling and Resolving KBGO Cases

All forms of violence are violations of human rights. Therefore, Indonesia as a legal state has an obligation to respect and provide a clear legal framework for its citizens, including KBGO victims. The increasing prevalence of KBGO cases, the social situation which is still dominated by patriarchal culture, and the increasingly unstoppable growth of the internet will continue to expand the forms and victims of KBGO.

Lawrence M. Friedman stated that law enforcement requires 3 important elements, namely legal substance, legal structure and legal culture (Ansori, 2017). The legal structure itself includes institutions, law implementers, the authority of law enforcement agencies and law enforcement officers. In this research, interviews were conducted with law enforcement agencies and law enforcement officers, namely the Police, the Department of Empowerment, Women and Children Protection and also Public Advocates at the Djoko Santoso Law.

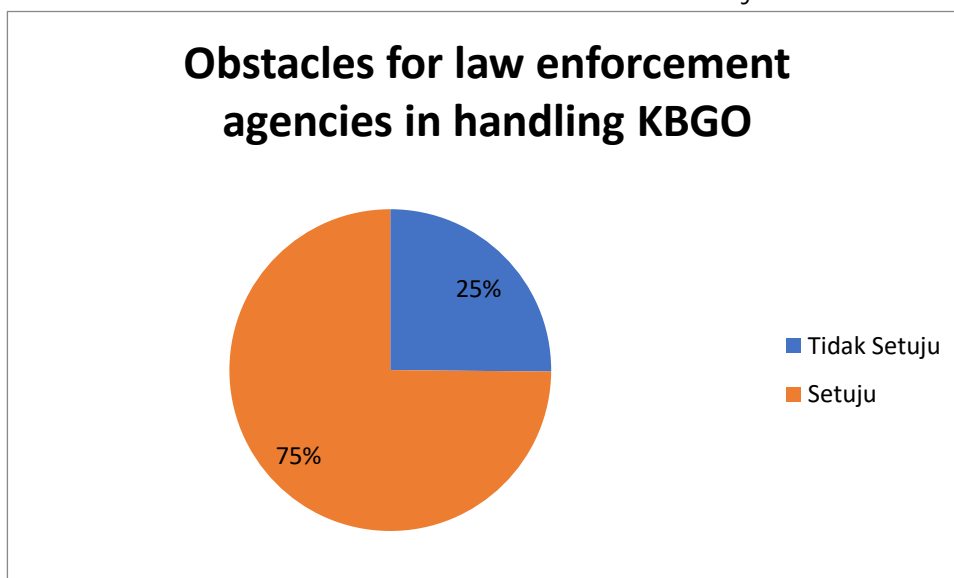


Figure 1. Interview Results for Assessment of KBGO Legal Rules in the Community's View as an effort to make the ITE Law and TPKS Law more effective

Based on Figure 1. it states that the Institution's obstacles in handling KBGO are around 75%, where this percentage is still quite large. In Article 80 of the National Police Chief's Regulation Number 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases within the National Police of the Republic of Indonesia states that they will pay attention and check with officers who have a gender perspective, facilitated in a special service room, get the right to privacy not to be published, receive treatment specifically, separating its placement from the male suspect room and implementing special procedures for the protection of women. Not all police units have a Cyber Crime Directorate. Cyber units are located at the Regional Police and at provincial borders. If there is evidence of sexual violations against women who have been given access by the Regional Police, the women will be sent to the Police Sexual and Child Protection Unit (PPA) located in the District. Violations against women who have been given access by the Regional Police, they will be sent to the Police Women and Child Protection Unit (PPA) located in the Regency. This makes it difficult for the PPA Unit to obtain KBGO reports. PPA experienced difficulty in obtaining KBGO reports. Handling cases where the victims are women will be referred together with the assistance of the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) which then has the function of legal, medical, psychosocial, rehabilitation and social reintegration services provided to women and children who are victims of physical, psychological and sexual violence. , trafficking of women and children, abandonment and exploitation. For this, there must be a realm of strengthening and expanding the KBGO which can be placed in the Siberian sub-unit. KBGO in the realm of strengthening and expanding is placed in sub-units.

Then the PP3A Service also explained that the problem was due to a lack of human resources and not enough budget to handle this case so it was less than optimal. Likewise, according to the Public Advocate at Djoko Santoso Law. According to him, the obstacles that occur are caused by the structure, namely that not all of the law enforcement officers have control. Such as a lack of human resources, because not everyone has mastered the approach used which still uses general legal concepts. Cases such as sexual harassment, violence against children, sexual violence against women are extraordinary crimes, criminal acts that must be resolved with a different but special approach. If we only use a legal approach and then talk about the provisions of the law, I am sure that similar incidents will arise in the future because they will not have a deterrent effect and cannot provide a resolution in the context of restoring the victims' rights. The case being said to be resolved is not a happy ending between the two parties but rather how the legal system takes the side of this female victim, as a form of protection and restoration of rights.

Then society's understanding is such that it still considers such incidents taboo to be revealed, but must be covered up because they are embarrassing. Only when all this is revealed does the victim's dignity appear to suffer, and the family's reputation improves, and it is not uncommon for the victim to cover it up and become a victim. They are forced to accept the possibility of restorative justice (peace) against the perpetrators. Third, considering the patriarchal culture that legitimizes in our society that women are at a lower level than men, this role has the implication of trivializing KBGO crimes. KBGO also influences how people are seen as motivated to commit crime.

Effectiveness of the Information and Electronic Transactions Law (ITE) and the Sexual Violence Crime Law (TPKS)

The TPKS Law exists as a complement to the Indonesian criminal justice instruments used to enforce the law against TPKS. The existence of the TPKS Law eliminates challenges in implementing the TPKS Law, because the TPKS Law covers all aspects of overcoming sexual violence criminal behavior, starting from prevention efforts to treatment and recovery efforts for TPKS victims.

Once passed, the relevant parties must immediately use the TPKS Law in the law enforcement process so that it can have a deterrent effect on the perpetrators and can immediately minimize the risk of increasing incidents of violence. Sexual crimes in Indonesia. According to the National Police, the process of changing the status of the PPA unit to a separate directorate has been accelerated. Because there is a need for regulations at the level of Police Regulations as Indonesia's guidelines in investigating and investigating TPKS cases as well as to change and refine the views of members of the National Police so that they are more sensitive to gender issues. With the promulgation of the Sexual Violence Crime Law (TPKS), perhaps many parties hope that handling sexual crimes will become a form of legal guarantee from the government to the community, especially for victims of sexual violence. violence. Apart from that, the government also hopes that the derivative regulations it is still preparing will soon be completed. However, the effectiveness of implementing the TPKS Law also depends on the professionalism of law enforcement officials. including an understanding of law enforcement against victims. The TPKS Law also systematically provides legal protection for TPKS victims. Starting from the substantive legal aspect with medical support and psychological rehabilitation, self-protection and legal support in law enforcement, the legal structure aspect in the form of an integrated criminal justice subsystem which makes victims of criminal acts the subject of the criminal justice process, there are aspects of legal culture which cause society to view criminal behavior as

a crime.

The Law on Information and Electronic Transactions is one of the criminal law regulations outside the Criminal Law regulations which regulates all forms of crime on social media, one of which is the crime of sexual harassment through social media or cyber pornography (Simamora et al., 2020). The provisions governing the criminal act of sexual harassment on social media are regulated in Article 27 paragraph (1) where in the provisions, by intentionally doing something without any right, you have contributed to, distributed things that can be accessed by electronic information or electronic documents which have an element of decency. contains elements of violating decency.

However, even with the TPKS Law and ITE Law, there must be special regulations governing KBGO considering that in today's digital era. Where, everyone uses technology now, whether for positive or negative purposes. Because, the appropriate legal protection given to victims of Online Gender Based Violence (KBGO) has not been specifically regulated in the law.

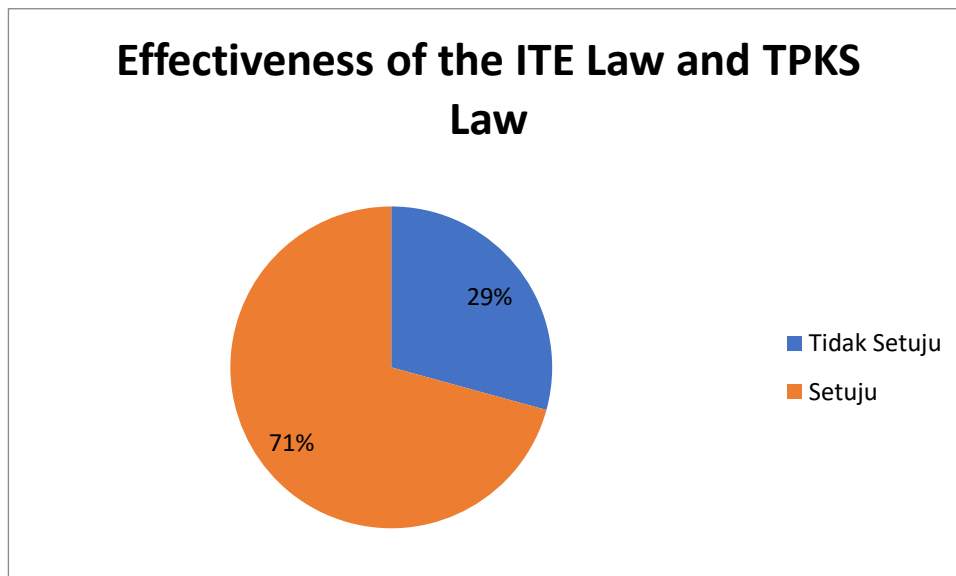


Figure 2. Results of the KBGO Legal Rule Assessment Questionnaire in the Community's View as an effort to make the ITE Law and TPKS Law more effective

Based on Figure 2, according to the results of interviews conducted by researchers regarding KBGO laws and regulations, Advocates at the Djoko Santoso Law stated that looking at the background of the TPKS Law was encouraged by several female activist friends who were members of at LBH Apik, Komnas Perempuan and so on, we must be optimistic that the TPKS Law will provide solutions to the problems that occur. Although then we have to measure the effectiveness of this law after it comes into force in cases in the field.

I don't have the capacity to judge whether it is effective or not, but to say it is effective

there must be a measuring tool. What is the measuring instrument? That was after the law came into force, how many people who were caught were punished based on the provisions of the law, which can then be interpreted as taking sides with the victims. How much solves the problems of these crimes and how much can restore the rights of victims. Our second measuring tool is talking about the apparatus, how our law enforcement apparatus responds to this new law by establishing internal rules for its distribution in order to uphold justice for victims. The hope is that there will be an internal Standard Operating Procedure (SOP) because after the TPKS Law, all institutions have issued SOPs, for example Pak Nadiem Makarim who issued an SOP for handling women's violence in educational institutions, the Ministry of BUMN and the Ministry of Home Affairs also issued this SOP. This means that there is a response and then how can law enforcement institutions, when there is a problem, synergize their main tasks and functions to respond. and no less important is culture. Again, if we see that this KBGO problem continues to occur then it is also necessary that there are special regulations governing this KBGO.

Then the DP3k also stated that the current regulations that can protect victims are the TPKS Law and the ITE Law. So the percentage is 71% as shown in the table above. However, it is even more optimal to protect victims, there must be special regulations regarding KBGO.

CONCLUSION

Based on the results and discussion, it can be concluded that there is an element of gender inequality which is the cause of gender-based violence, both online and offline. First, the public's view regarding KBGO does not fully understand its urgency. Then there are obstacles for Law Enforcement Agencies in Handling and Resolving KBGO Cases according to the police, the Department of Empowerment, Women and Children Protection and also Public Advocates at the Djoko Santoso Law said that not all police units have an Action Directorate Cyber Crime. The effectiveness of the Information and Electronic Transactions Law (ITE) and the Sexual Violence Crimes Law (TPKS) with the enactment of the Sexual Violence Crimes Law (TPKS Law) must be followed up in its implementation along with the Electronic Information and Transactions Law (ITE). These follow-up actions include legal and non-legal steps. Legal steps include the completion of the drafting of implementing regulations. Non-legal steps include capacity building training and preparing resources in all regions.

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