

Legal Analysis of Electronic-Based Sexual Violence Crimes

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Abstract. *In today's era, technology is something that is very much needed by every group, the use of technology brings positive forms to facilitate communication and so on, but the use of technology is often misused, such as Electronic-Based Sexual Violence which is regulated in Law Number 19 of 2016 concerning Electronic Information and Transactions and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. The purpose of this thesis research is to synchronize the two regulations and how to enforce the law against perpetrators. electronic-Based Sexual Violence Crimes. the method used is the normative legal approach method. With the research specification using normative descriptive, where secondary data is analyzed qualitatively. The formulation of the problem is analyzed based on the theory of legal certainty and the theory of law enforcement. The results of the study show synchronization of regulations on Electronic-Based Sexual Violence Crimes as regulated in Article 27 Paragraph (1) of Law Number 19 of 2016 concerning Electronic Information and Transactions and Article 14 of Law Number 12 of 2022 concerning Sexual Violence Crimes, where the TPKS Law does not specifically regulate electronic-based sexual violence, but the TPKS Law regulates matters that are not in the ITE Law. Then the law enforcement of KSBK perpetrators according to the TPKS Law is subject to a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah). And the ITE Law in Article 27 paragraph (1) provides for a maximum imprisonment of 6 (six) years and a maximum fine of IDR 1,000,000,000 (One Billion Rupiah). in this case Constitution ITE has a higher sentence and fines when compared to Constitution TPKS, But Constitution TPKS is here to provide guarantees of prevention, protection, access to justice and recovery, as well as the fulfillment of victims' rights in a comprehensive manner which has not been obtained so far. constitution ITE.*

Keywords: Based; Crime; Sexual; Violence.

1. Introduction

Indonesia is a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholding moral values, ethics, morals and the noble personality of the nation, believing in and being devoted to God Almighty, and respecting diversity in the life of society, nation and state.¹

Everyone has the right to feel safe and secure and to be protected from the threat of fear, this is regulated in The 1945 Constitution and Law Number 39 of 1999 concerning Human Rights, that in Article 28 G paragraph(1) The 1945 Constitution. Every person has the right to protection of themselves, their family, their honor, their dignity, and their property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right.

In today's era, technology is something that is very much needed by every group. In everyday life, humans also depend on technology that is increasingly developing rapidly with the help of technology can help and facilitate human activities. It is undeniable that the presence of the internet is increasingly needed to help humans from various aspects of life, both in education, social, business and so on.

Social media is an online media that makes it easy for users to interact socially online. This is where users can communicate, network, share and so on. The progress certainly has positive and negative impacts on society. The positive impact with the advancement of internet technology is that people find it easier to get news information.

In addition, the progress of various applications and features that are more sophisticated and make it easier for people to interact with others online (in the network). Some of the interaction applications that can be accessed by the public include Instagram, WhatsApp, Twitter, Telegram, Facebook, and so on. These applications have various features. With these applications, people can upload electronic documents in the form of photos, videos, do live broadcasts and voice messages that can be accessed by others.

People can also interact with each other with the comment feature on electronic documents that have been uploaded publicly. In addition, some of these applications have voice call and video call features. With the video call feature, it is now easier for people to communicate long distance, because they can make voice calls and can see the person they are contacting online (online) without having to meet in person. In addition to these advances, now the cellphone features are more sophisticated with screenshots that can take pictures or screenshots on the cellphone screen.

¹Widayati, "Implementation of legal principles in the formation of participatory and equitable legislation", Unissula Law Journal, Volume 36 No. 2, September P-ISSN: 1412-2723.

In addition to having a positive impact on people's lives, the advancement of internet technology also has a negative impact. With the existence of various social media applications and their features, social media has now become a place for people to interact, especially young people. Electronic documents uploaded in the public sphere can be seen by other people who use social media as well. Some features on social media are sometimes still misused by some people. Such as violating the guidelines and regulations on social media. Usually social media prohibits its users from uploading content that resembles pornography. In Indonesia, there are still many people who still misuse social media as a place to commit crimes. One of them is electronic-based sexual violence.²

Electronic sexual violence is a crime in cyberspace on social media. The form is like uploading electronic documents that contain sexual content. For example, uploading videos or photos of victims that violate morality, or resemble pornography taken without the consent of the victim and then uploaded publicly to social media. This incident usually occurs in couples who are in conflict. The motives vary, some are because of heartache, some are dumped, to using the victim for other interests of the perpetrator. This is clearly detrimental to the victim, because the immoral photos or videos are spread and can be seen by others. The victims are usually predominantly female. This crime can result in psychological suffering for the victim.

According to data from the National Commission on Violence Against Women's CATAHU 2022, during the 10-year period of recording cases of violence against women (2012-2021), 2021 was recorded as the year with the highest number of cases of Gender-Based Violence, which increased by 50% compared to 2020.⁷ The National Commission on Violence Against Women noted that there were eight types of sexual violence facilitated by the presence of technology, ranging from harassment in cyberspace, hacking, distribution of intimate content without consent, to threats to distribute intimate photos and videos. There is also sextortion or blackmail via intimate videos. According to the National Commission on Violence Against Women's Annual Report 2021, there were 940 cases reported directly to the National Commission on Violence Against Women throughout last year, an increase from the previous year, 2019, which was 241 cases. Reports from service institutions collected by the National Commission on Violence Against Women have also skyrocketed. In 2020, there were 510 cases reported, almost double the previous year which was 126 cases.³

And according to The 2023 Annual Report (Catahu) of LBH Apik Jakarta reported that there were a total of 1,141 complaints of cases of violence against women in

²L. Heru Sujamawardi. "Legal Analysis of Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions", *Dialogia Irudica: Journal of Business and Investment Law*, April 2018. p.84

³ Tempo.co, "Online Sexual Violence Increases in Indonesia", accessed from <https://nasional.tempo.co/read/1466866/kekerasan-seksualonline-meningkat-di-indonesia>

Jabodetabek. As many as 250 cases out of 497 complaints from the classification of the most sexual violence cases were Electronic-Based Sexual Violence (KSBE). In the online era, violence against women can now threaten from the palm of your hand. This is called electronic-based sexual violence (KSBE) including those that have recently occurred in Jakarta, Bogor, Depok, Tangerang, and Bekasi (Jabodetabek).

The 2023 LBH Apik Jakarta Annual Report confirms this. The two most common KSBE cases found were threats to spread sexually explicit images/photos (111 cases) and the spread of non-consensual intimate content (77 cases). KSBE dominates as many as 250 cases out of a total of 497 complaints from the classification of sexual violence cases. Still in complaints of cases of violence against women (KTP) with a total of 901 cases (79%), there are also cases of domestic violence (201 cases), Violence in Dating (141 cases) and Online Gender-Based Violence/KBGO (63 cases). Meanwhile, complaints of non-KTP cases as many as 240 cases (21%) cover several things. Starting from family civil (60 cases), general criminal acts (47 cases), children's rights (44 cases), cases outside the APIK category (41 cases), cases from the paralegal community (26 cases) and employment (22 cases).⁴

In law enforcement of Electronic-Based Sexual Violence (KSBE) can be prosecuted using the TPKS Law, namely in Article 14 (1) Any person who without the right: records and/or takes pictures or screenshots containing sexual content against the will or without the consent of the person who is the object of the recording or picture or screenshot; transmits electronic information and/or electronic documents containing sexual content against the will of the recipient which are aimed at sexual desires; and/or stalks and/or tracks using an electronic system against a person who is the object of the electronic information/document for sexual purposes shall be punished for committing electronic-based sexual violence, with a maximum prison sentence of 4 (four) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).

In addition to the provisions in the TPKS Law, Electronic-Based Sexual Violence (KSBE) can also be regulated in Article 27 Paragraph (1) of the ITE Law in conjunction with Article 1 number 1 of Law No. 19 of 2016, namely: Article 27 paragraph (1) of the ITE Law Any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality. And Article 1 number 1 Law no. 19 of 2016 | Electronic information is one or a collection of electronic data, including but not limited to writing, sound, images,

⁴ The Story of Rustiningsih Dian Puspitasari, "Women in Jabodetabek Are the Most Victims of the Spread of Sexual Photos", <https://www.konde.co/2023/12/perempuan-di-jabodetabek-paling-banyak-jadi-korban-penyebaran-foto-bernuansa-seksual.html> accessed on February 6, 2024, at 12.20 WIB.

maps, designs, photos, electronic data interchange (ED4), electronic mail, telegrams, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or perforations that have been processed which have meaning or can be understood by people who are able to understand them.

From the provisions above, what is meant by "making accessible" is all other actions other than distributing and transmitting through electronic systems that cause electronic information and/or electronic documents to be accessed or known by other parties or the public. For violations of Article 27 paragraph (1) of the ITE Law, the criminal provisions are regulated in Article 45 of the ITE Law, namely that Any Person who meets the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment of a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). The perpetrator has the potential to be punished with imprisonment of a maximum of 6 years and/or a maximum fine of Rp1 billion.

As an example case a public figure, namely Anya, who is posing sitting on a sofa. The upload received many responses from Anya Geraldine's followers herself, such as the emergence of comments. There are various types of comments such as praise, but many also comment inappropriately. Seen in the screenshot, there are sexual comments about Anya's pose and clothes in the upload. Maybe for some people this is common and normal because a public figure gets a lot of attention from the public. However, this is also a form of electronic-based sexual violence (KSBE). This form of harassment depicts women as sexual objects through electronic media.

Examining the background of the problem above, several problems can be formulated as follows: How is the synchronization of regulations regarding electronic-based sexual violence crimes in Law No. 19 of 2016 concerning Electronic Information and Transactions and Law No. 12 of 2022 concerning Sexual Violence Crimes and How is the law enforced against perpetrators of electronic-based sexual violence crimes in Law No. 19 of 2016 concerning Electronic Information and Transactions and Law No. 12 of 2022 concerning Sexual Violence Crimes.

The purpose of this study is to determine the legal regulations for electronic-based sexual violence crimes in the perspective of Law No. 19 of 2016 concerning ITE and Law No. 12 of 2022 concerning TPKS. And to find out how to enforce the law against perpetrators of electronic-based sexual violence crimes in the perspective of Law No. 19 of 2016 concerning ITE and Law No. 12 of 2022 concerning TPKS.

2. Research methods

This research is a normative legal research, and the research specifications used are qualitative research methods, namely by means of descriptive analysis research. The data sources used are laws and regulations, as well as legal

materials that support and complement primary legal materials and tertiary legal materials.

3. Results and Discussion

3.1. Synchronization of regulations regarding electronic-based sexual violence crimes in the ITE Law and the TPKS Law.

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

KSBE is included in the prohibited acts regulated in Chapter VII of the ITE Law, namely Article 27 paragraph (1), that: "Any person who intentionally and without the right broadcasts, displays, distributes, transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality for public knowledge".

The enforcement of KSBE using the ITE Law is problematic because KSBE attacks sexuality and gender identity, and there is no guarantee of security and protection for victims. Although there are regulations that govern it, immoral content is still abundant. In fact, there are criminal sanctions for the distribution of immoral content, as regulated in Article 45 paragraph (1) of the ITE Law. The ITE Law which has been in effect since March 25, 2008 is expected to provide a sense of security and become a legal umbrella for IT service users. However, if we look closely at the norms in the articles concerning prohibited acts (Articles 27 - 37), it can raise questions about several terms. One of them is the definition of the phrase "violating morality" in Article 27 paragraph (1), which although is a common term, can give rise to multiple interpretations, so that law enforcement officers will find it difficult to apply it.

Criminal sanctions for KSBE are regulated in Article 45 paragraph (1) in conjunction with Article 27 paragraph (1) of the ITE Law, namely: "Any person who intentionally and without the right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality as referred to in Article 27 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

Based on the article, the perpetrators will receive legal sanctions in the form of a maximum prison sentence of six years or a maximum fine of one billion rupiah. And or legal sanctions for acts of electronic-based sexual violence.

b. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

Forms of sexual violence whose actions are regulated in the TPKS Law are stated in Article 4 paragraph (1), consisting of: Non-physical sexual harassment, Physical sexual harassment, Forced contraception, Forced sterilization, Forced marriage, Sexual torture, Sexual exploitation, Sexual slavery, Electronic-based sexual violence. KSBE is regulated in the TPKS Law Article 4 Paragraph (1) letter i in conjunction with Article 14, which states:

- a. Any person who without the right:
- 1) Recording and/or taking sexually explicit images or screenshots against the will or without the consent of the person who is the object of the recording or image or screenshot; and/or
 - 2) Transmitting electronic information and/or electronic documents containing sexual content against the wishes of the recipient which is aimed at sexual desires;
 - 3) Conducting stalking and/or tracking using electronic systems against the person who is the object.

punished for committing electronic-based sexual violence, with a maximum prison sentence of 4 (four) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah)

- b. In the case of the act as referred to in paragraph (1) being carried out with the intention of:
- a. to carry out blackmail or threats, coercion; or
 - b. misleading and/or deceiving someone to do, allow something to be done, or not to do something, shall be punished by imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).
 - c. Electronic-based sexual violence as referred to in paragraph (1) is a complaint-based crime, unless the victim is a child or person with a disability.
 - d. In the case of acts as referred to in paragraph (1) letters a and b carried out in the public interest or to defend oneself from the Crime of Sexual Violence, it cannot be punished.
 - e. In the case of victims of electronic-based sexual violence as referred to in paragraph (1) letters a and b being children or people with disabilities, the existence of the victim's will or consent does not eliminate criminal charges.

Criminal sanctions The TPKS Law uses a double track system, namely a two-track system regarding sanctions in criminal law, namely the type of criminal sanctions on the one hand and the type of action sanctions on the other hand. The difference in principle between criminal sanctions and action sanctions is that criminal sanctions apply an element of reproach or suffering to the perpetrator as a response to what he did. While action sanctions apply an element of education that is not retaliatory in nature and solely protects the community from threats that can harm the interests of the community.

Related to KSBE, the maximum criminal penalty is 6 (six) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah). While for other TPKS, the penalty is increased by 1/3 (one third), if "done using electronic

means." In addition to imprisonment and fines, the perpetrator can also be subject to additional penalties and actions. Additional penalties can be in the form of:

- a. Revocation of child custody rights or revocation of guardianship;
- b. Announcement of the identity of the perpetrator; and/or
- c. Confiscation of profits and/or assets obtained from TPKS.

Meanwhile, for actions that can be given together in the form of medical rehabilitation or social rehabilitation. In addition to criminal, victims of Article 14 paragraph 2 whose threat is more than 4 years are entitled to restitution, Then, Article 15 paragraph (1) of the TPKS Law stipulates that sanctions for electronic-based sexual violence crimes are increased by 1/3 if committed under the following conditions:

- a. carried out within the family circle;
- b. carried out by health workers, medical personnel, educators, education personnel, or other professional personnel who have been given a mandate to carry out treatment, protection, and recovery;
- c. carried out by employees, administrators, or officers towards people entrusted or handed over to them for guarding; (guarding in this provision is carried out, among others, at educational units, government institutions, non-government institutions, international institutions domiciled in Indonesia, homes, hospitals, social institutions, or social rehabilitation centers/workshops).
- d. committed by a public official, employer, superior, or manager against a person employed or working with him;
- e. carried out more than 1 (one) time or carried out against more than 1 (one) person;
- f. carried out by 2 (two) or more people in partnership;
- g. committed against children;
- h. carried out on people with disabilities;
- i. carried out on pregnant women;
- j. committed against a person in an unconscious or helpless state;
- k. committed against a person in a state of emergency, danger, conflict situation, disaster or war;
- l. causing the victim to suffer serious injuries, severe psychological impacts, or infectious diseases;
- m. resulting in the cessation and/or damage to reproductive function; and/or
- n. resulting in death.

Synchronization of regulations regarding electronic-based sexual violence crimes in the ITE Law and the TPKS Law. **Synchronization can be done in two directions, namely vertical and horizontal synchronization.**

- a. Vertical Synchronization is the synchronization of laws and regulations with other laws and regulations in a different hierarchy. In efforts to synchronize vertically, settlement efforts can use the legal principle of *Lex Superiori derogate Lex Inferiori*.
- b. Horizontal Synchronization is the synchronization of laws and regulations with other laws and regulations in the same hierarchy. Horizontal synchronization aims to reveal the reality to what extent certain laws and regulations are horizontally harmonious, namely having harmony between laws and regulations of the same level regarding the same field (Sayuna, 2016).

In this case, it is not much different in the ITE Law, we can find the same case, namely because the contents of one of the articles of the ITE Law make the victim whose rights should be protected actually become a suspect in the case that befell him.

Looking at the differences between the two laws, it was found that:

- a. The ITE Law does not specifically regulate electronic-based sexual violence because only 2 articles relate to this matter.
- b. The TPKS Law also does not specifically regulate electronic-based sexual violence. However, the TPKS Law regulates something that is not in the ITE Law, regarding protection for victims of electronic-based violence.

So the position of the ITE Law and the TPKS Law through the principle of preference with the *Lex Specialis Systematic Principle* is seen from which is more specific between the TPKS Law and the ITE Law. In terms of both the TPKS Law and the ITE Law both regulate electronic-based sexual crimes. The TPKS Law emphasizes that electronic-based sexual violence is included in the form of sexual violence regulated in the law. Deeper regulations related to the problem of sexual violence, the solution can use the TPKS Law. So according to its validity, the TPKS Law is more relevant.

3.2. Synchronization of regulations on electronic-based sexual violence crimes from the perspective of the ITE Law and the TPKS Law.

Vertical synchronization is done by looking at whether a regulation in force in a particular field does not conflict with each other. While horizontal synchronization can use the principles of *Lex Posteriori derogate Lex Priori* and *Lex Specialis derogate Lex Generalis*. Horizontal synchronization is the synchronization of regulations with other regulations in the same hierarchy. Horizontal synchronization is done by looking at various regulations that are of equal rank and regulate the same or related fields. Horizontal synchronization must also be done chronologically, namely according to the time sequence of the

stipulation of the relevant regulations.

Horizontal synchronization aims to reveal the reality to what extent certain legislation is horizontally harmonious, that is, there is harmony between equal legislation concerning the same field.

The principles related to the formation of statutory regulations are:

1. The law does not apply retroactively (non-retroactive).
2. The law cannot be contested.
3. Higher laws override lower laws (*lex superiori derogate lex inferiori*).
4. Special laws trump general laws (*lex specialis derogate lex generalis*).
5. The law that came into force later trumps the previous law (*lex posteriori derogate lex priori*).

3.3. Law Enforcement of Electronic-Based Sexual Violence in the ITE Law.

The provisions governing criminal acts of KSBE in the ITE Law are regulated in Article 27 paragraph (1) where the provisions contain: "any person who intentionally and/or without the right distributes, transmits, and makes accessible electronic information or electronic documents that contain elements that violate morality". Then the sanctions that can be given to someone who intentionally distributes, transmits, and makes accessible electronic information that contains content that violates morality are subject to a maximum prison sentence of 6 (six) years and a maximum fine of IDR 1,000,000,000 (One Billion Rupiah) as contained in Article 45 paragraph (1).

The criminal law enforcement system in Article 27 paragraph (1) is formulated explicitly regarding the element of error, which is clearly stated in it, namely:

- a. "intentionally". The word intentionally means someone who has an element of intention, desire, willingness to do a legal act. Then "without rights" is an act or action that is done in an unlawful manner.
- b. The word "distribute" means sending and spreading electronic information and documents to many people via social media/mass media.
- c. The word "transmit" can be interpreted as sending information and electronic documents to one party via social media or electronic media that contain immoral content.
- d. And the term "making accessible" means an act that can cause electronic information and documents to be accessed and known by many people or the public.

Based on the legal regulations and sanctions against crimes of sexual harassment through social media, it can be concluded that Law No. 19 of 2016 concerning harassment as an amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions is very clear in regulating what content is included in the

scope of crimes of sexual harassment on social media or cyber porn and can be used to reach criminal acts of sexual harassment on social media or cyber porn.

The Supreme Court in the cassation decision: 574K/Pid.Sus/2018 for the act of "distributing or transmitting immoral content" contained in Article 27 paragraph 1 of the Electronic Information and Transactions Law (ITE) with a prison sentence of 6 months and a fine of IDR 500,000,000 (Five Hundred Million Rupiah).

The panel of judges must provide considerations first before reaching their decision. In providing considerations for the imposition of a decision on a criminal act, the judge cannot look at one side only but there are things that must be considered first in the imposition of the decision, namely whether the considerations mitigate or aggravate the criminal and are based on the judge's thinking Supreme Court Regulation (PERMA) No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law. The panel of judges should handle cases of women in conflict with the law, it is hoped that they can consider the facts in the trial regarding the inequality of social status in society which causes gender inequality between men and women and the judge must also be able to provide considerations regarding the problem of the legal power relationship that occurs between the parties to the case which causes women to be helpless.⁵

In the Enforcement of the Law on Sexual Violence Crimes (Law Number 12 of 2022), the section of the Article that can ensnare acts of electronic-based sexual violence in this Article is stated in Article 14 paragraph (1) of the Law on Sexual Violence Crimes which states:

(1) Any person who without the right:

- a. Recording and/or taking sexually explicit images or screenshots without the consent of the person who is the object of the recording or image or screenshot;
- b. transmit electronic information and/or electronic documents containing sexual content beyond the recipient's will which are directed towards sexual desires; and/or
- c. conducting stalking and/or tracking using electronic systems against people who are the objects of electronic information/documents for sexual purposes.

shall be punished for committing electronic-based sexual violence, with a maximum prison sentence of 4 (four) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah)."Criminal provisions for perpetrators who commit acts of electronic-based sexual violence in accordance with the rules will be subject to a maximum prison sentence of 4 years and/or a maximum fine of 200 million rupiah. One example of a case that

⁵Dina Shofia, M. Iqbal, JIM Criminal Law: Vol. 4, No.3 August 2020, p. 593.

is currently being widely discussed by the public regarding acts of electronic-based sexual violence is the case of Rebecca Klopper (RK), a public figure who is famous among young people in Indonesia, where her name was dragged after a pornographic video was spread on the internet and it was suspected that the woman in the video was her. After being investigated, it was strongly suspected that the perpetrator of the spread of non-consensual intimate content was RK's ex-lover who had recorded them while they were having sex but RK was unconscious so she did not want the recording. It is suspected that the motive for this distribution was a form of venting from RK's ex because of past grudges. This case has been reported by RK to the police and has been accepted and has been continued to the investigation stage. The electronic-based sexual violence experienced by RK can ensnare the perpetrator with Article 14 paragraph (1) point a, namely making recordings containing sexual content without the consent of the person who is the object of the recording.⁶

Another case of electronic-based sexual violence also occurred to Another example of a case related to electronic-based sexual violence that occurred in Malang City, and the perpetrator was a journalist with the initials DN. This incident was reported by a fellow journalist who was one of the victims. This case began with a WhatsApp group consisting of several journalists in the Malang area, and that's where the perpetrator carried out his actions which he considered were just jokes among fellow journalists, where the perpetrator spread sexually charged stickers, namely pornographic images showing naked women and men having sex. Dyah Arum Sari as the reporter of this case admitted that she did not accept DN's actions so she reported him to the authorities to follow up on this case.⁷

The advancement of technology has created a society that has a new culture, as well as a society that has the freedom to do its activities and carry out recreation in a practical way. The development of technology like this has caused a communication revolution that has caused people's lives in various countries to be inseparable and even determined by information and communication.⁸It is unfortunate that there are irresponsible individuals who misuse social media facilitated by the internet in the electronic world, by committing acts that violate humanitarian norms that harm the victims. With this facility, it becomes a place for perpetrators who do not understand the impact and risks for both the perpetrators, victims, and all social media users.

⁶ Cnnindonesia.com, "RK speaks up about the pornographic video case"<https://www.cnnindonesia.com/hiburan/20230606174555->, accessed on February 7, 2024, at 23.30 WIB.

⁷ Bacamalang.com "Strong Reaction to Porn Sticker Parade in WA Group"<https://bacamalang.com/direaksi-hard-parade-of-porn-stickers-and-alleged-blasphemy-in-group->accessed on February 7, 2024, at 23.45 WIB.

⁸Renny Koloay, "The Development of Indonesian Law Regarding Information and Communication Technology", *Unsrat Law Journal*, Vol. 22 No. 5, January 2016, p.21.

Among them are the distribution of sexual content on social media, as well as the distribution of sticker features containing sexual elements on WhatsApp. The implementation of related articles when connected with examples of cases experienced by victims of electronic-based sexual violence such as the examples of cases raised include; the case of the distribution of intimate videos without consent experienced by Rebecca Klopper, as well as the case of the distribution of sexual stickers by irresponsible individuals via WhatsApp media experienced by Lina and also Dyah Arum Sari, of course can ensnare the perpetrators.

The cases of electronic-based sexual violence that occurred against the victims, including; Rebecca Klopper, Lina, and Dyah Arum Sari are very appropriate if connected with the TPKS Law, namely Law Number 12 of 2022, namely in Article 14 paragraph (1). For the RK case, it is very appropriate to connect it with point a which states that the perpetrator has made a recording containing sexual content without the consent of the person who is the object of the recording. For the cases of Lina and Dyah, it is very appropriate if connected with point b which states that the perpetrator without the right to transmit electronic information containing sexual content outside the will of Lina and Dyah as recipients for the perpetrator's sexual purposes. If charged with this law, the perpetrator will be subject to a maximum imprisonment of 4 years and/or a maximum fine of 200 million rupiah. In Article 14 paragraph (1) if connected with the three cases, all of them have fulfilled the elements.

Specific matters that fulfill these elements, which strengthen these cases to be linked to Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

- a. Because this article has a meaning of consensus or the meaning of agreement contained. The element of the meaning of consensus or containing agreement is what is in Article 14 which strengthens this Article for use.
- b. because if it is linked to 2 other laws, namely the ITE Law, it is not explained whether this law contains elements of consensus or is based on the wishes of the recipient.

So both laws are less specific in regulating if the elements of the article are linked to the case that occurred. Article 14 paragraph (1) is a legal umbrella for victims and certainly will not discriminate against victims.

Dilemma of Law Enforcement of Sexual Violence Crimes in the ITE Law and TPKS. Sexual violence can happen to anyone, anytime and anywhere, including on the internet. Electronic-based violence (ESV) is a form of violence that is carried out and facilitated by technology or more specifically through social media. The Association of Progressive Communication (APC) defines ESV as a form of electronic-based violence that is carried out and exacerbated in part or in whole by information and communication technology such as mobile phones, the internet, social media platforms, and email. SAFENet then also formulated

ESV as an act of violence that is intended to sexually harass and facilitated by technology.

In the process of handling KSBE before the law, until now the verdict still uses the Electronic Transaction Information Law (ITE) and has not used the Sexual Violence Crime Law (TPKS) in the trial verdict. However, the National Commission on Violence Against Women in a Press Release issued on March 10, 2021 concerning the Revision of the ITE Law to Prevent Criminalization and Re-victimization of Female Victims of Sexual Violence indicated that in enforcing the law on KSBE cases, the use of the ITE Law has the potential to over-criminalize KSBE victims. Based on Rifka Annisa's legal assistance experience in assisting KSBE victims, the ITE Law is likely to criminalize KSBE victims. However, there are several factors that are the reasons why judges still use the ITE Law in KSBE case decisions, including:

1. First, the TPKS Law is still difficult to implement because it is considered a new law so that in law enforcement it cannot be used optimally and is still accustomed to using the ITE Law.
2. Second, because in the ITE Law, Article 45 A, point two, states: "Any person who intentionally and without the right to disseminate information aimed at inciting hatred or hostility towards individuals and/or certain community groups based on ethnicity, religion, race and inter-group (SARA) as referred to in Article 28 paragraph (2) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."

Meanwhile, in the case of distributing intimate content without consent in the TPKS Law, Article 14 states, "Any person who without the right:

- a. making recordings and/or taking sexually explicit images or screenshots without the consent of the person who is the object of the recording or image or screenshot;
- b. transmitting electronic information and/or electronic documents containing sexual content against the wishes of the recipient which is directed towards sexual desires; and/or
- c. carrying out stalking and/or tracking using an electronic system against a person who is the object of electronic information/documents for sexual purposes, shall be punished for committing electronic-based sexual violence, with a maximum prison sentence of 4 (four) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).

So in the application of the ITE Law article, it has a higher sentence and fine when compared to the TPKS Law, this is what emphasizes the difference between these two legal umbrellas. These factors cause the ITE Law to be used more by law enforcers in resolving KSBE cases, even though the ITE Law is not ideal if applied in resolving KSBE because the two laws do not have a good

gender perspective and do not side with the victim. In addition, when referring to more general criminal provisions, the application of the Criminal Code (KUHP) is only limited to criminal acts of indecency and sexual intercourse.

Another thing, if we talk about the TPKS Law, even though the punishment for the perpetrator is only 4 years in prison and a fine of 200,000,000 million, the TPKS Law guarantees the fulfillment of the victim's right to receive counseling, because in addition to focusing on punishing the perpetrator, the TPKS Law also regulates matters related to ensuring the recovery of victims of violence. The TPKS Law is here to provide guarantees of prevention, protection, access to justice, and recovery, as well as the fulfillment of victims' rights comprehensively which have never been obtained. This is certainly expected to be a breath of fresh air for law enforcement against all forms of sexual violence including KSBE. The law enforcement situation in KSBE cases is indeed very dilemmatic, even so, it does not mean that we do not have a way out, therefore it is important to continue to weigh what is most needed, whether punishment and fines or fulfillment of victims' rights or even both.

However, the implementation of the TPKS Law to date still seems half-hearted. The legal umbrella of the TPKS Law needs to be continuously encouraged and still requires more massive socialization, especially to law enforcement officers to understand the context related to cases of Electronic-Based Sexual Violence so that law enforcement and victims' rights can be fulfilled and implemented optimally. In addition to using a legal approach, conflicts related to Electronic-Based Sexual Violence in Indonesia can also be minimized using an integrative, transformative, and restorative approach as a good alternative to achieving sustainable and inclusive conflict resolution.

There are several things that can be done, including; all Indonesian people need to raise awareness about the importance of gender equality and the rejection of electronic-based violence, and take concrete actions to address the conflict. In addition, the Indonesian government needs to increase socialization, supervision and law enforcement against gender-based violence, and work together with civil society and international institutions to address gender-based violence conflicts and strengthen policies that support gender equality.

4. Conclusion

Regulations on Electronic-Based Sexual Violence Crimes are regulated in Article 27 Paragraph (1) of Law Number 19 of 2016 concerning Electronic Information and Transactions and Article 4 Paragraph (1) Jo. Article 14 of Law Number 12 of 2022 concerning Sexual Violence Crimes, in this case the synchronization of only 2 related articles. In this case, the TPKS Law also does not specifically regulate electronic-based sexual violence. However, the TPKS Law regulates matters that are not in the ITE Law and Law Enforcement of perpetrators of electronic-based sexual violence KSBE according to the TPKS Law, the perpetrator is subject to a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR

200,000,000.00 (two hundred million rupiah). And the enforcement of the ITE Law in Article 27 paragraph (1) which has elements of KSBE which violate morality, carries a maximum prison sentence of 6 (six) years and a maximum fine of IDR 1,000,000,000 (One Billion Rupiah). In this case, the ITE Law has a higher sentence and fine compared to the TPKS Law. These factors cause the ITE Law to be used more by law enforcers in resolving KSBE cases. However, the TPKS Law, although the punishment for the perpetrator is only 4 years in prison and a fine of 200,000,000 million, the TPKS Law guarantees the fulfillment of the victim's rights.

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