



## Rejecting Alternative Dispute Resolution (ADR) in Sexual Violence Crime Cases

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**Abstract:** The crime of sexual violence in Indonesia is in an emergency phase. The massive number of reports of cases of sexual violence has created its own paranoia for the community, especially in terms of the process of handling cases of sexual violence in Indonesia. This study aims to analyze cases and phenomena of sexual violence in Indonesia and to carry out a normative approach as a study of handling cases of sexual violence. The research method used is normative legal research and the method of analyzing literature and case studies of sexual violence in Indonesia. The results of this study indicate that cases of sexual violence have evolved along with the times. The emergence of gender-based cyber sexual violence (KSBG), abortion cases, and efforts to handle cases using the Alternative Dispute Resolution (ADR) system are injustices to victims. Settlement of cases of sexual violence must be in accordance with Law Number 12 of 2022 concerning Crimes of Sexual Violence, namely the implementation of a legal judicial process.

**Keywords:** Sexual Violence, Normative Law, Gender-Based Cyber Sexual Violence, ADR, Abortion.

### INTRODUCTION

Sexual violence is a highlight of law enforcement in Indonesia. The massive phenomenon of sexual violence against women that occurs in Indonesia is a result of a lack of law enforcement, which has led to poor prevention and handling of cases of sexual harassment there.

According to Komnas Perempuan's data release, from January to November 2022, there have been 3,014 cases of sexual violence against women (Komnas Perempuan, 2023). This figure has decreased from the previous year, which amounted to 3,838 complaint cases. However, even though case reports have decreased, the forms of sexual violence have changed, namely with cases of information technology-based sexual violence. Cases of sexual violence through social media or cyberspace continue to increase every year. Based on data from the Komisi Nasional Anti Kekerasan Terhadap Perempuan (2022), it shows an increase in the number of KSBG by 83% in 2021 compared to 2020.

The phenomenon of sexual violence, which is increasingly massive and evolves over time, especially in the digital era, has made women lose their right to express themselves. The phenomenon of revenge porn is a form of gender-based sexual violence (KSBG) against women that began to appear along with the use of social media in Indonesia. Revenge Porn is a type of extortion carried out by parties who have private data containing sexual content, both recorded with and without consent, in order to achieve specific goals (Sugiyanto, 2021).

Actors who take advantage of the use of technology or internet media as a means of extortion will extort by threatening to spread personal data that contains the victim's sexual content into the public domain, such as on social media. Victims of KSBG tend to be women, especially in an area that still prioritizes the concept of patriarchy (Sugiyanto, 2021). Women often become victims of revenge porn or other types of KSBG because women's bodies are still seen as mere objects of sexuality and not as objects that need to be appreciated (Davis Kempton, 2020).

An example of a revenge pornography case is the one that befell celebrities with the initials GA and MY who legally violated laws related to pornography (Goenawan, 2021). The case involving a police officer with the initials "RB," which resulted in the death of a student named "NW," who was previously a couple (Dzulfarah, 2022). In this case, the Surabaya District Court handed down a criminal sentence against the perpetrator for his actions leading to the occurrence of an abortion (Amirullah & Zaki, 2022). The victim AAL's case is one of the sextortion cases in which the perpetrator used his proximity to the victim to blackmail him (Merdeka.com, 2022). The victim EL was involved in a case of sexual assault and assault that was halted due to a mediation process. However, in the end, there was no information regarding the criminal process or the mediation process related to the settlement of the case.

**Table 1. Table of Sexual Violence Cases**

No	Case	Victim	Explanation
1	Revenge Porn and the Spread of Pornography	GA and MY	Victims of GA and MY are both victims and suspects in cases. The case ended in ADR between the reporter and the victim because the suspect in the story had been arrested. The suspect in the distribution of crimes related to the Pornography Law
2	Abortion	NW	NW was a victim of forced abortion, which occurred two times by the suspect RB. Defendant RB ended up in criminal proceedings.
3	Sextortion	AAL	The victim of AAL experienced extortion on the pretext of closeness to a partner. The accused ended up with a criminal case.
4	Abortion, abuse, and sextortion	EL	The victim experienced sexual violence and abuse, which led to an abortion. The process was carried out with ADR, but violence reoccurred. The case does not end with any information.

Source: Research 2023

In general, victims of sexual harassment will experience social pressure, which then changes their psychology so that they lose their ability to think logically, which will change

their attitudes and daily behaviors (Anindya et al., 2020). The extreme impact of the disturbance that occurs in victims of sexual violence is self-harm behavior or self-harm that leads to suicide. This phenomenon also leads to cases of abortions carried out either by both parties or under coercion from one of the parties.

In the course of handling cases of sexual violence against women, the world is familiar with the Restorative Justice or Alternative Dispute Resolution (ADR), which in the end was unable to fulfill the rights of victims of sexual violence (Ramteke, 2020). The case that occurred in Brebes, where a 15-year-old girl experienced sexual violence, caused the pregnant victim to experience public criticism because it would be resolved through mediation (Rasyid, 2023). This is one of the many cases that came to light due to the simplification of the handling of cases of sexual violence. Cases of sexual violence that ended with the ADR method were generally caused by the fact that both parties' families felt embarrassed if there was an expansion of information due to errors made by both men and women, so that the best decision was not based on psychological and social grounds but based on the norms prevailing in society. (Paradiaz & Soponyono, 2022).

Cases of sexual violence that have occurred, especially against women in Indonesia, that have not been uncovered or that have been uncovered but are then resolved through the ADR method are based on non-constructive thinking, namely, victims feeling oppressed by public sentiment over the consequences that they cannot fully control (Brajaningrum, 2023). Based on data from Komnas Perempuan, in 2021, it shows that 85% of cases do not yet have information at the settlement stage, so massive support and encouragement are needed to encourage victims to report cases of sexual violence against women. Law of the Republic of Indonesia Number 12 of 2022, Article 23, is the legal basis for the implementation of serious law enforcement against cases of sexual violence, so the handling of such cases must be carried out through a legitimate court.

Research conducted by Aryana (2022) shows that in cases of sexual violence such as abortion and violations of personal data, personal relationships outside of official ties such as those between boyfriends or lovers are very common. Paradiaz & Soponyono (2022) concluded that fulfilling the rights of victims of sexual violence is a right that must be fulfilled in addition to the provision of punishment for the perpetrators of crimes. Bates (2017) provides testimonies and research related to the impact of forcing the dissemination of personal data and solving problems in ADR, which concludes that there is damage to mental health and that it continues to cause traumatic effects even though it has been resolved in a peaceful manner.

Based on the background above, researchers will conduct research related to sexual violence against women through cases that occurred in Indonesia, based on the perspective of applicable law. Case studies of sexual violence that results in abortions, dissemination of personal data, and settlement through the ADR system are the focus of this research, which has not been available in previous studies.

## **LITERATURE REVIEW**

Sexual violence is defined as any sexual act, any attempt to perform a sexual act, any comment or suggestion of sexual behavior that is not intentional or otherwise, and an act of coercion to have sexual intercourse with someone (Syauket et al., 2022). Gender-based cyber violence is a new type of sexual violence that has emerged in the modern world.

Gender-based cyber violence (KSBG) against women is an act of violence against women and girls that uses information and communication technology (ICT) in part or entirely. KSBG is a form of control used in personal relationships to dictate what the victim should and should not do based on the wishes of the perpetrator, and if this is not done, the

perpetrator threatens, intimidates, and embarrasses the victim (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022).

Alternative Dispute Resolution (ADR) is a formula that gives the public options for resolving disputes without going to court. As society evolves, ideas emerge for incorporating the APS component into the law on arbitration (Ramteke, 2020). This idea arose in order to provide a clear legal umbrella and to allow for rapid development of dispute resolution outside of the court.

## RESEARCH METHODS

This research uses normative or doctrinal legal research. Research using normative legal types is legal research that considers law as a building block of the legal system, which concerns principles, norms, rules, and legal regulations, court decisions, agreements, and doctrines (Efendi & Ibrahim, 2018). The research method used is a statutory (legal) approach, which involves reviewing all laws and regulations relating to sexual violence, reviewing previous literature, and conducting case studies related to cases of sexual violence that occurred against women.

The law used in this study is the Law of the Republic of Indonesia No. 12 of 2022 on Crimes of Sexual Violence, as well as other laws and regulations that lead to sexual violence. The use of previous research as a source for case analysis is one of the methods in this study.

## RESULT AND DISCUSSION

Sexual violence that is currently experiencing a shift from conventional violence to Gender-Based Cyber Violence (KSBG) against women is an act of violence against both women and girls that is carried out in whole or in part by using information technology and online media. KSBG is a tool that can provide penetration and control in relations between people (within certain ties) in order to control the victim in order to benefit the perpetrator and harm the victim and if this is not fulfilled the perpetrator threatens, intimidates and embarrasses the victim (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022 ).

Based on Komnas Perempuan's records, it was recorded that in 2021 13 types of KSBG occurred in women which were divided as follows: Cyber Grooming, Cyber Harassment, Cyber Hacking, Cyber Recruitment, Cyber Surveillance, Illegal Content, Malicious Distribution, Morphing, Online Defamation, Revenge Porn, Sexting, Sextortion, and Voyeurism. Of the 13 types of KSBG cases, Cyber Harassment and Sextortion cases were the majority cases. Cyber Harassment can be interpreted as an activity or behavior using communication technology (social media or other internet media) to contact, disturb or embarrass victims (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022).

Cyber Harassment has a lot to do with latent sexual desire but is within limits that a person cannot control so that emotions and sexual dependence on someone arise (Stevens et al., 2021). Steven (2021) explains that Cyber Harassment causes victims to have a traumatic effect and lose trust in someone. Sextortion can be interpreted as a crime in the form of extortion using the threat of misusing the victim's sexual content with the aim of taking advantage of the victim's weaknesses such as financial (money) or forced sexual relations (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022). Sexual crimes with the type of sextortion can occur at any age and group. Syauket et al. (2022) explains that sexual crimes with the type of sextortion can occur anywhere, even in educational settings. The education environment is currently in the public spotlight, especially because of the case that happened to the victim who was a student and the suspect was a teacher/teacher. This happens because of the advantage of domination where the teacher has full power over the grades of his students.

Research conducted by Aryana (2022) shows that there is stigma and a patriarchal culture that causes in many cases of cyber-based sexual violence it is difficult to report cases to the authorities for fear of the subjectivity of law enforcers who corner the victim. Historically, the KSBG case has always been related to the blackmail aspect besides its function as a sexual tool. The case that ensnared GA and MY was a form of anomaly in the legal process which caused both of them to become victims as well as suspects. GA is a public figure who is a victim of revenge porn as well as a suspect in pornography cases. Cases of distributing sexual videos involving GA and MY are cases that did not involve GA and MY in the distribution process. However, the perpetrators take advantage of the ownership of the content as an effort to suppress and use the content to gain economic benefits. Victims as well as suspects GA and MY were greatly harmed both financially and socially with these conditions as a result of mistakes they did not make directly (Adinda, 2021b).

The case experienced by AAL was a form of KSBG which ended with criminal threats. The victim AAL (15) who is a student was deceived by TDP (19) using the pretext of dating. In this case, the victim of AAL and the perpetrator had a personal relationship, so that the pretext of romance was used as the premise of the crime mode. The perpetrator threatens to spread sexual content in order to blackmail the victim economically so that the victim must follow what the perpetrator wants (Merdeka.com, 2022). In this case, the perpetrator's criminal provisions can be fulfilled but the victim's rights have not been touched on as a result of the perpetrator's actions. Based on this case, the perpetrator violated Article 14 of the Law of the Republic of Indonesia Number 12 of 2022 concerning Crimes of Sexual Violence.

In that article referring to paragraph (2) letter a which reads "to extort or threaten, force", "a person to do, allow something to be done, or not to do something, shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiahs)". The article states that the perpetrators of extortion by using the victim's personal content which is carried out by depriving the victim of the rights of the victim without the victim's consent will be punished according to the provisions of the Penal Code.

In that article, referring to paragraph (2) letter a, which reads "to extort or threaten, force," "a person shall be punished with imprisonment for a maximum of six (six) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiahs)." The article states that the perpetrators of extortion who use the victim's personal content, which is carried out by depriving the victim's rights without the victim's consent, will be punished according to court provisions. Article 14 of the TPKS Law explicitly provides criminal law provisions that ensnare people who threaten them with the aim of personal gain.

The review of violations of sexual content without consent will also lead to violations of Article 27 of Law No. 11 of 2008 of the Republic of Indonesia concerning information and electronic transactions. This article will ensnare perpetrators who have intentionally spread someone's personal content in public spaces. A violation of this article actually contains protection against extortion cases for personal content that contains sexuality. Basically, everyone has the right to get personal protection and avoid threats of fear in accordance with Article 28G of the 1945 Constitution.

Cases of sexual violence involving law enforcement officers occurred in Pasuruan, with the victim NW and the suspect RB. RB, who is a member of the police, finally made NW, who is his lover, have two abortions under the pretext of the future. NW, who experienced psychological and social pressure, finally committed suicide as a step to solve the problem. However, RB, as the perpetrator, was only punished for violating the article on abortion. In this case, although it did not directly cause the victim's death, the perpetrator indirectly put psychological pressure on the victim, which caused depression due to sexual violence in the form of a deliberate attempt to abort the womb. The case also illustrates that reporting on

processes of social violence will be very difficult for someone who is dominated psychologically and socially by someone with power. In many cases, reporting cases of sexual violence is not granted, and their rights are not protected; instead, they are criminalized and limited in their opportunities to speak and express their opinions. Komnas Perempuan's case records in its annual report on cases of sexual violence against women found cases of EL victims who experienced sexual violence accompanied by economic violence (Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022). In this case, the EL victim had to accept physical, economic, and sexual violence, which caused a miscarriage. The victim and perpetrator used restorative justice to end the investigation while it was being investigated. However, the violence continued, so the victims reported it, which in the end the authorities did not handle. This case is one that occurred before the passing of the TPKS Law in 2022.

Based on this case, there was a multi-layered violation of Article 6 of the TPKS Law, which contains acts of physical sexual violence. The interpretation of Article 6 in this case is based on the victim's inability to refuse the perpetrator's invitation to have sexual intercourse, resulting in coercion, which results in an unwanted pregnancy. In addition to this article, the perpetrator was also ensnared in Article 466 of the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code, in Paragraph 1, which contains persecution of a person. The perpetrator was also ensnared in Article 464, paragraph 1, letter b, of the Criminal Code regarding abortion, where the perpetrator caused the abortion of the victim.

The handling of reports of sexual violence using the principles of restorative justice, or ADR, has actually violated Article 23 of the TPKS Law, which contains the obligation of the judicial process in every case of sexual violence. The use of ADR in handling cases cannot provide guarantees to victims of fulfilling their rights for the losses that have befallen them (Hasanuddin, 2022). Furthermore, in many cases, the use of the ADR method in cases of sexual violence against women leaves long-term traumatic effects such as PTSD (Post-Traumatic Stress Disorder) as well as other mental errors such as anxiety attacks and feelings of insecurity (Adinda, 2021a). The process of handling cases using ADR must be returned to being a criminal case in accordance with the provisions of Article 23 of the TPKS Law as a guarantee for the fulfillment of rights and prevention of cases of sexual violence against women.

The judicial process must be seen from all legal perspectives as well as how victims experience interference in running their lives after experiencing sexual violence. Criminal sanctions, such as confinement fines and material fines, can pose a serious threat to perpetrators of sexual violence in Indonesia. Implementation of efforts to eradicate criminal acts of sexual violence does not only focus on preventing and imposing criminal sanctions on perpetrators of crimes but also on fulfilling the rights of victims of crimes of sexual violence, especially women (Wijaya & Ananta, 2022).

Law No. 12 of 2022 concerning Crimes of Sexual Violence at least contains matters related to the enforcement of sexual violence violations, namely: (1) Acts of Sexual Violence; (2) Measures and Sanctions; (3) Law of Procedure for Crimes of Sexual Violence from reporting to decision implementation; (4) Victims' rights to protection, treatment, and recovery; (5) Prevention Efforts; (6) Monitoring and Coordination, with cooperation between parties, especially victims; The legal umbrella against crimes of sexual violence against women must be implemented in order to encourage victims of sexual violence cases to be able to report and claim their rights as people who have been harmed and their human rights violated. In addition, the socialization of the stigma of sexual violence against women must be straightened out as a form of community cooperation in preventing sexual violence and protecting victims of sexual violence, especially women.

Justice as the goal of law is based on the fact that in a society or a state, individual interests and the interests of human groups are always in conflict with one another. This

opposition causes conflict and even war. The law maintains peace and weighs conflicting interests carefully by seeking a balance between them, so that it can achieve fair goals with a balance between protected interests and allow everyone to get their fair share through regulations that contain the continuity of interests. interest.

The use of ADR in cases of sexual violence does not actually reflect the continuity of legal justice. In cases of sexual violence that occurred, it was found that victims were not given the right to protection and recovery but tended to be criminalized under the pretext of social norms. The massive shift towards the use of information technology has become an important focus for law enforcement officials and the whole community in guarding against and preventing the occurrence of sexual violence, both directly and via the internet. Law Number 12 of 2022 must be a game changer for all cases of sexual violence, where cases of sexual violence must be carried out through a valid court process and fulfillment of the rights of victims of sexual violence must be carried out by the state.

## CONCLUSION

Data showing that the majority (85%) of sexual violence cases have not received further treatment indicates that the enforcement of the rule of law is still far from satisfactory. The concept of ADR as a method of resolving cases of sexual violence should be abandoned, and we should continue to use the general justice process. Based on an analysis of cases that occurred in Indonesia, the phenomenon of abortion and gender-based sexual violence (KSBG) is the main focus in handling cases of sexual violence. Law No. 12 of 2022 Concerning Crimes of Sexual Violence becomes a strong legal umbrella in enforcing cases of sexual violence by providing a legal judicial process and prohibiting the use of alternative dispute resolution (ADR) processes to resolve problems. With this law, victims of sexual violence must have the courage to submit reports and process them legally in order to obtain justice by fulfilling their rights and imposing criminal sanctions on law violators.

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