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The Urgency of Regulating Sexual Extortion in Online Gender-Based Violence from a Criminal Law Perspective

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Abstract: With the increasing types and forms of Online Gender-Based Sexual Crimes (OGBSC) in this modern era, especially through sexual extortion, it raises the question of whether sexual extortion in OGBSC should still be categorized as extortion. Given that sexual extortion is closely related to the crime of disseminating intimate content through the internet, it is necessary to analyze the legal basis used to criminalize perpetrators of sexual extortion who disseminate intimate content on cyberspace. This paper discusses the Legal Problems of Sexual Extortion with the Motive of Threats of Dissemination of Intimate Content in Indonesia and the Urgency of Regulating Sexual Extortion in Online Gender-Based Violence from a Criminal Law Perspective. The research method uses normative legal research. The results of the study show that cases of sexual extortion in Indonesia related to the dissemination of intimate content due to the perpetrator's threats being ignored, such as in Decision Number 182/Pid.B/2018/PN.Smn and Number 56/Pid.Sus/2019/PN.Mks., both criminalize the perpetrator's actions in disseminating intimate content belonging to the victim, because the victim did not fulfill the perpetrator's wishes in the form of an invitation to marry and money, but the Public Prosecutor or judge ignored the extortion committed by the perpetrator, but only punished the perpetrator with the article on the act of disseminating intimate content and the article on threats of violence or intimidation. So the government needs to improve the articles in the Crime of Sexual Violence Law regarding electronic-based sexual violence, by adding the main crime of sexual extortion.

Keyword: Sexual Blackmail, Online Gender-Based Violence, Criminal Law.

INTRODUCTION

The phenomenon of the increasing number of cases of blackmail by exploiting someone's intimate content or commonly called sextortion, is increasing due to the rapid development of science in the modern era. This has an impact on the development of technology, especially information and communication technology. As a result, currently every human activity lives side by side with technology, such as the internet and social media. Technological progress is like a double-edged sword because the impacts can be positive or negative in human interaction with one another. With the existence of information and communication technology, the

dissemination of information is more effective and efficient because it does not limit human interaction from the reach of time, distance, and space. The main media that is often used is the internet which provides millions of information and can be easily accessed.

One of the innovations in the world of technology is the presence of social media. According to Varinder Taprial and Priya Kanwar, social media is a medium used by humans to be social online by sharing stories, content, photos, information, chatting, and so on that are connected to other people (Taprial and Priya Kanwar, 2012), thus forming a social network.

The most frequently used social media worldwide according to Data Rate Reportal are Facebook (2.9 billion users), YouTube (2.5 billion users), WhatsApp (2 billion users), Instagram (1.5 billion users), and Facebook Messenger (988 million users). Social media users have become part of human life regardless of age, status, and place. Moreover, because of its easy use, humans are more facilitated in obtaining information and interacting without limits (borderless). Unfortunately, the information received is not always good and correct, such as irresponsible use of social media which can harm others. With this convenience, it is actually used as a loophole or opportunity for criminals to carry out criminal acts in cyberspace or the unreal world (cybercrime) via the internet and social media. This deviant behavior can be in the form of bullying, sexual harassment, prostitution, fraud, and others. This has also caused the emergence of new problems, such as new types of crimes and criminal acts in Indonesia, especially crimes in cyberspace (Bahri, 2012).

One of the crimes that is often committed through the internet is Online Gender-Based Violence or commonly referred to as OGBSC. The highest increase in OGBSC itself was due to the Covid-19 pandemic which resulted in increased interaction between people with each other using online media (such as the internet and social media). Perpetrators can easily carry out their actions at home due to social restrictions so that their chances of meeting the victim are very small. In addition, victims find it difficult to report to Service Institutions and/or the authorities due to social restrictions (Mauliya and Noor, 2022).

In the case of OGBSC, the perpetrator utilizes the internet and social media starting by building relationships in cyberspace through his/her account, either a real account or a fake account. Then the perpetrator asks to be friends and then builds a relationship or connection with the target. This act can be a crime and harm the target when the perpetrator starts to make them uncomfortable because the conversation leads to a negative direction (such as teasing/flirting, asking for intimate body pictures of the victim, sexting, and others). The reason why perpetrators of sexual violence prefer to use social media rather than directly to carry out their actions is because the perpetrator's real identity can be 'covered up' by creating fake accounts and fake photos. With that, the perpetrator thinks it is easy to spread pornographic content, ask for intimate photos of the victim, harass the victim, and tease the victim. In addition to the perpetrator being someone unknown to the victim (anonymous), OGBSC perpetrators are generally carried out by people who know and/or are close to the victim. Through their relationship with the perpetrator by being friends, dating, or ex-boyfriend, especially in the realm of family or Domestic Violence (National Commission on Violence Against Women, 2022).

There are various forms of online gender-based violence (OOGBSC), but in this study, the author's main focus is on sextortion. This term is a combination of the words "sexual" and "extortion", so it is interpreted as sexual blackmail or sextortion. Sextortion is a serious crime in which the perpetrator threatens to spread the victim's private or sensitive content if the victim does not hand over intimate photos or videos, sexual gratification, or money (Rathod et al., 2022). In other words, sextortion is a form of blackmail that uses pornographic intimate photo or video content (Subawa, 2021). In addition, Transparency International Indonesia and the International Association of Women Judges categorize sextortion as one of the motives for corruption.

In the process of public services, there are many state officials (State Civil Apparatus) who abuse their authority to ask for compensation from victims to have sexual relations with blackmail so that their cases or affairs can be resolved. If not, then it will not be taken care of by the public official. (Ocean, 2019). However, in this study, the author will not discuss further about sexual extortion in the realm of corruption, but rather in the realm of cyber gender-based violence.

Sexual extortion itself is a development of the crime of revenge porn. Where in revenge porn, the perpetrator spreads intimate content belonging to the victim with the motive of revenge, which the perpetrator obtained first because of his consensual relationship with the victim, such as ex-girlfriend, ex-husband/wife, and others. Revenge porn is one of the reasons for the perpetrator to commit sextortion, where the perpetrator extorts to take advantage of the victim. Sextortion is inseparable from the crime of spreading intimate content belonging to the victim to cyberspace because when the threat from the perpetrator to spread the content is ignored by the victim, the perpetrator can easily spread the content to cyberspace.

The phenomenon of sexual extortion in Indonesia can be seen from several cases that have occurred and are carried out in various ways, such as the case of cyber sexual extortion in the form of video call sex ("VCS") in Medan where the victims were a married couple. Instead of getting sexual satisfaction, the victim was actually tricked by the perpetrator, which was done by the perpetrator (male) who claimed and acted like a woman, initially inviting them to get acquainted and chat via social media, then inviting the victim (husband) to VCS. The victim (husband) then carried out inappropriate actions and unknowingly, the victim's sexual activity in front of the perpetrator was recorded by the perpetrator and the recording was used by the perpetrator to threaten and blackmail the victim (husband). The victim's wife also became a victim of sextortion indirectly because she had no other choice but to fulfill the perpetrator's wishes so that her husband's indecent video would not be disseminated. As a result, the victim's wife was threatened and blackmailed by the perpetrator for billions of rupiah.

With the increasing development of types and forms of sexual crimes in this modern era, especially with the emergence of sexual blackmail, it raises the question of whether sexual blackmail in OGBSC should still be categorized as blackmail in the *lex generalis* rules based on Article 368 paragraph (1) of the Criminal Code ("KUHP"). Given that sextortion is closely related to the crime of disseminating intimate content through the internet, then can the *lex specialis* provisions in Article 29 in conjunction with Article 4 paragraph (1) of Law No. 44 of 2008 concerning Pornography ("Pornography Law") and Article 27 paragraph (1) of Law No. 19 of 2016 in conjunction with the ITE Law be a legal umbrella for criminalizing perpetrators of sextortion who disseminate intimate content on cyberspace.

The ITE Law and the Pornography Law only prohibit the distribution of intimate content as formulated in Article 27 paragraph (1) of the ITE Law and Article 29 of the Pornography Law. Then Article 27 paragraph (4) of the ITE Law prohibits the distribution of electronic documents that contain blackmail or threats and the sanctions are regulated in Article 45 paragraph (1) and paragraph (4) of the ITE Law. The ITE Law also does not regulate perpetrators who distribute electronic documents such as photos or videos that violate morality and contain blackmail and/or threats against victims.

The latest developments show that the Government together with the DPR have made improvements to the ITE Law through Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. From the explanation in the latest ITE Law, however, it is not mentioned to provide protection in the event of OGBSC. This can also be seen from the lack of explicit regulations against perpetrators of sexual extortion in OGBSC where the ITE Law does not regulate perpetrators who distribute electronic documents such as photos or videos that violate morality and contain blackmail and/or threats against victims.

From the existence of this empty norm, it is interesting to see and analyze the urgency of criminalizing extortion perpetrators in Indonesian laws and regulations in a *lex specialis* manner that specifically regulates Online Gender-Based Violence, although there are alternative articles used for similar cases but they are still not perfect.

METHOD

This writing is a normative legal research, namely research conducted by reviewing the applicable laws and regulations or applied to a particular legal problem. Normative research is often referred to as doctrinal research. (Arabiyah & Wagner, 2023), namely research whose object of study is regulatory documents and library materials. Library research, namely research on secondary data. This research is conducted in an effort to find data on the problems to be studied, which consist of: Primary Legal Materials, are legal materials that are binding in nature, including related regulations and Secondary Legal Materials, are materials that provide explanations regarding primary legal materials, such as books, literature, research results and scientific works. This research uses data analysis techniques with deductive logic, deductive logic or processing of legal materials in a deductive manner, namely explaining something that is general and then drawing it into a more specific conclusion (Ali, 2023).

RESULTS AND DISCUSSION

Examining the Legal Issues of Sexual Extortion with the Motive of Threats to Disseminate Intimate Content in Indonesia

There are 3 (three) forms of Sexual Extortion based on the purpose of the act, namely the perpetrator wants money from the victim, the perpetrator wants sexual satisfaction (through sexual intercourse and/or asking for intimate content from the victim), and the perpetrator wants the victim to stay in a relationship that the victim does not want (unwanted relationship). Many perpetrators also want two or all of these things from the victim which are carried out by the perpetrator in cyberspace (Robbins, 2019). Based on the sextortion phenomenon that occurs in Indonesia and in the world, the form of sextortion based on the means and methods of committing sextortion crimes can be classified into 4 (four) forms (Hartney, 2018), that is:

- a. Sextortion on the basis of a consensual relationship;
- b. Sextortion with catfishing (catfishing is a phenomenon in cyberspace where perpetrators create online identities to trick victims into a relationship);
- c. Sextortion by hacking; and
- d. Sextortion with intimate content discovered by the perpetrator.

Based on the understanding of sexual extortion and OGBSC, it can be concluded that sexual extortion is OGBSC, because sexual extortion is inseparable from information technology crimes due to the use of electronic media and cyberspace. (Sururi, 2018). This is seen from the definition of sextortion which is blackmail against victims using intimate content, where the intimate content is obtained by the perpetrator through technological media, for example WhatsApp, Instagram, Facebook, and others. The intimate photos and/or videos are misused by the perpetrator by threatening the victim to spread the intimate content to social media (because the form of the intimate content is digital) (Christian, 2020).

The dissemination of non-consensual intimate content as a result of sextortion threats that are not complied with by the victim is also OGBSC. The meaning of non-consensual here is the dissemination of intimate content to cyberspace that is not agreed to or even known by the victim as the owner of the intimate content. As previously explained, when the victim of sextortion does not comply with the perpetrator's wishes in his threats, the threats result in the dissemination of intimate content by utilizing digital technology (chat applications, emails, uploading on social media, etc.) (Kusuma and Veda, 2019).

There is a possibility that sexual blackmail is not carried out in the online realm or OGBSC, but the possibility is not great, due to the development of the era with the use of technology and the assumption of perpetrators that threatening and spreading intimate content through cyberspace will be easier. (Suryokumoro, 2020). Because it is not limited by space and time, then if the victim does not recognize the perpetrator, the perpetrator can easily manipulate the perpetrator's identity. It is rare to find cases of sextortion when the perpetrator threatens and blackmails the victim directly and/or distributes intimate content with hardcopy (physical copies).

The rules regarding the dissemination of intimate content have been accommodated in positive law in Indonesia, one of which is through legal products in the form of laws. The laws and their articles that serve as the legal umbrella for the dissemination of intimate content are Article 27 paragraph (1) of Law No. 19 of 2016 in conjunction with Law No. 11 of 2008 concerning Information and Electronic Transactions ("ITE Law") and Article 29 of Law No. 40 of 2008 concerning Pornography ("Pornography Law").

The essence of Article 368 paragraph (1) of the Criminal Code is extortion carried out with/threats of violence to gain benefits from others in the form of goods, providing debt or writing off receivables. While Article 369 paragraph (1) of the Criminal Code emphasizes extortion with threats to defame/reveal secrets so that someone gives the perpetrator goods, provides debt, or writes off receivables. These two articles are not sufficient as a legal umbrella for sexual extortion, because they do not focus on the form of threats with/without violence using intimate content.

The crux of sexual blackmail is blackmail using intimate content as a means of threat, so that the perpetrator gets goods such as money from the victim, or has sex, or whatever the perpetrator wants from the victim. In order for an act to be said to be blackmail, it must fulfill all the elements of Article 368 paragraph (1), one of which requires the threat of violence or violence against the victim. The violence referred to in the Criminal Code is physical violence that makes someone faint or helpless (Criminal Code, 2023).

The intention to hurt the victim in sexual blackmail in the form of threats of violence is not physical (hitting, punching, physically harming) but rather sexuality and visuals by threatening to spread intimate content. In addition, according to the Author, KBGS (in the cyber world) is not included in the definition of violence in Article 368 paragraph (1) of the Criminal Code, due to the transition of space in the criminal area, which previously was direct physical violence, now it can be done with fingers and cellphones only. Not to mention when the threat to spread the intimate content is not fulfilled by the victim, so that the intimate content is spread by the perpetrator.

Judging from Article 29 of the Pornography Law and Article 27 paragraph (1) of the ITE Law, according to the Author, it is sufficient to be a legal umbrella for the act of spreading intimate content, but the drawback is that it does not pay attention to the reason why intimate content is spread or distributed and only focuses on its distribution. Then the formulation of the article regarding "content that violates morality" in Article 27 paragraph (1) of the ITE Law which is not explained further and as a result causes confusion and very broad interpretation. Article 27 paragraph (4) of the ITE Law which focuses on blackmail and threats (where blackmail and threats refer to the Criminal Code), and Article 29 of the ITE Law which focuses on threats of violence and intimidating victims.

Both of these articles are also still not sufficient and complete to meet the criteria as articles of sexual extortion. Because extortion and threats in Article 27 paragraph (4) of the ITE Law, as well as threats in Article 29 of the ITE Law, do not use intimate content as a means of threat. Given that Article 27 paragraph (4) and Article 29 of the ITE Law are 'duplications' of Article 335 paragraph (1), Article 368 paragraph (1), Article 369 paragraph (1) of the Criminal Code

(Law Number 11 of 2008), so that the meaning of extortion and threats refers to the Criminal Code ((2021).

As mentioned in the previous discussion, that blackmail and threats in the Criminal Code are also not sufficient to regulate sexual blackmail. In this regard, there needs to be a *lex specialis* provision that regulates sextortion as sexual violence/OGBSC, so that it is not mixed up and interpreted with the provisions of other articles that only discuss blackmail as a crime against property (Article 368 paragraph (1) and Article 369 paragraph (1) of the Criminal Code) or provisions of laws that do not regulate sexual violence/OGBSC (UU ITE). To discuss this matter in more depth, it will be done in the next sub-discussion.

The Urgency of Regulating Sexual Extortion in Online Gender-Based Violence from a Criminal Law Perspective

Based on the previous explanation that Sexual Blackmail is classified as a crime, because this is an act that can result in victims/losses (material and/or non-material) and/or has the potential to cause victims/losses (material and/or non-material) in society. Sexual Blackmail requires high attention, considering that many victims of this act experience financial losses because they are continuously blackmailed by the perpetrator and if not, the intimate content will be spread by the perpetrator, there are even victims who commit suicide due to threats from the perpetrator.

If we then analyze cases of sexual extortion in Indonesia related to the dissemination of intimate content due to the perpetrator's threats being ignored, such as in the Sleman District Court Decision No. 182/Pid.B/2018/PN.Smn and the Makassar District Court Decision No. 56/Pid.Sus/2019/PN.Mks. in the 2 (two) decisions, both criminalize the perpetrator's actions in disseminating the victim's intimate content, because the victim did not fulfill the perpetrator's wishes in the form of an invitation to marry and money. The problem with these two decisions is that the Public Prosecutor ("PP") or judge ignored the extortion committed by the perpetrator, but only punished the perpetrator with the article on the act of disseminating intimate content and the article on threats of violence or intimidation.

In the decision of the Sleman District Court No. 182/Pid.B/2018/PN.Smn, the judge sentenced the perpetrator based on Article 29 of the Pornography Law (against the perpetrator's actions in disseminating pornographic content) and Article 45B of the ITE Law (against the perpetrator's actions in sending messages threatening violence or intimidating through electronic information media/documents). And in the decision of the Makassar District Court No. 56/Pid.Sus/2019/PN.Mks), the judge sentenced the perpetrator based on Article 27 paragraph (1) of the ITE Law (against the perpetrator's actions in disseminating intimate content belonging to the victim). From these two decisions, the weakness in taking action against sexual extortion behavior is that it only uses the legal basis for the dissemination of intimate content or making threats of violence. This raises a problem because sexual extortion is seen as an act that is not so urgent and makes law enforcement officers potentially use the same article as the previous decision for sexual extortion that occurs in the future.

Based on the analysis and description of the elements of the articles in the laws and regulations in Indonesia that previously regulated sexual extortion, the shortcomings of the various regulations can be described in a table as follows:

Table 1. Disadvantages of various regulations on sexual harassment

No	Regulation	About	Weakness
1	Article 488 paragraph (1) of Law Number 1 of 2023	Extortion	a. Does not regulate acts of threats of violence or violence by utilizing sexual content media. - Only limited to the elements of 'threats of violence that cause psychological suffering' and 'giving an item'.

No	Regulation	About	Weakness
	concerning the Criminal Code		b. 'Goods' in the draft Criminal Code does not include intimate content or sexual pleasure
2	Article 27 paragraph (4) of Law No. 19 of 2016 in conjunction with Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law)	Distributing, transmitting, making accessible information and/or electronic documents containing blackmail and/or threats	a. The definition of extortion and threats refers to acts of extortion and threats in the general provisions of the Criminal Code (Article 368 paragraph (1) of the Criminal Code). b. Does not regulate acts of blackmail and threats by utilizing sexual content media.
3	Article 29 of Law No. 19 of 2016 in conjunction with Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law)	Sending information and/or electronic documents containing threats of violence or intimidation	a. Threats of violence (physical) and intimidation do not constitute sextortion. b. The form and purpose of this act is unclear.
4	Article 14 paragraph (2) of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence	Extortion as an aggravation for the actions in Article 14 paragraph (1) of this law	a. It does not regulate the basic act of sextortion. b. Lack of explanation of the elements in the Explanation section of this law.

Source: data processed by researchers.

There are still shortcomings in the laws and regulations in Indonesia in criminalizing sexual extortion in OGBSC. Article 27 paragraph (4) of the ITE Law which refers to the definition of extortion and threats in the old Criminal Code, where in fact the articles on extortion and threats in the Criminal Code are also insufficient to be a legal umbrella for sextortion. Article 29 of the ITE Law which regulates threats of violence or intimidation is also not an element of sextortion. In addition, the absence of an explanation of the form of the act of intimidating others in this article gives rise to multiple interpretations of this article.

The Law on Sexual Violence Crimes (UU TPKS/Undang-Undang tentang Tindak Pidana Kekerasan Seksual) is finally present as a legal umbrella for sextortion in special provisions (*lex specialis*), which is regulated in Article 14 paragraph (2) of the TPKS Law as an aggravating article of Article 14 paragraph (1), so that there are three forms of sextortion. It's just that this article does not regulate the basic act of sextortion, namely the act of extortion carried out by someone with the threat of spreading intimate content when they do not heed the perpetrator's wishes which can be in the form of money, goods, sexual pleasure, and others. The wording of the extortion article in Article 488 paragraph (1) of the New Criminal Code is not much different from the extortion article in the old Criminal Code, where the New Criminal Code regulates crimes committed using electronics and expands the form and definition of 'violence', 'threat of violence', 'goods'. However, the expansion of these elements does not change the form of extortion in the New Criminal Code into extortion in a special realm (for example sexual extortion/sextortion). Given that the extortion article of the New Criminal Code does not regulate threatening using intimate content.

Thus, starting from Roeslan Saleh's thinking that the criminalization of Sexual Extortion needs to be carried out on the urge to protect the interests of individuals directly or indirectly in society, and needs to be protected by criminal law. Then if Sexual Extortion is associated with the theory of criminalization according to Moeljatno, then Sexual Extortion is an act that can be criminalized because it is a criminal act that is considered to endanger the safety of society and as a result of committing acts prohibited by law, the offender needs to be punished so that

the consequences of the punishment can restrict or eliminate freedom and personal safety (Handoko, 2015).

Considering that Indonesia has ratified CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) through Law Number 7 of 1984, violence and forms of discrimination against women including sexual extortion in OGBSC must be eliminated. Through the formation of legislation to eliminate such violence. Policies such as legislation regarding the handling of extortion cases in Indonesia are currently not optimal in providing protection and meeting the needs of victims of sexual violence, as mentioned in the previous case example, that the articles relating to sexual extortion, and are not sufficient to regulate cases such as Article 368 paragraph (1) of the Criminal Code, Article 369 paragraph (1) of the Criminal Code, Article 27 paragraph (4), and Article 29 of the ITE Law.

CONCLUSION

There are still shortcomings in the laws and regulations in Indonesia in criminalizing sexual extortion in OGBSC. In its application in the Sleman District Court decision No. 182/Pid.B/2018/PN.Smn, the judge sentenced the perpetrator based on Article 29 of the Pornography Law (against the perpetrator's actions in disseminating pornographic content) and Article 45B of the ITE Law (against the perpetrator's actions in sending messages threatening violence or intimidating through electronic information media/documents). And in the Makassar District Court decision No. 56/Pid.Sus/2019/PN.Mks), the judge sentenced the perpetrator based on Article 27 paragraph (1) of the ITE Law (against the perpetrator's actions in disseminating intimate content belonging to the victim). From these two decisions, the weakness in prosecuting sexual extortion behavior is only using the legal basis for disseminating intimate content or making threats of violence. This raises a problem because acts of sexual extortion are seen as acts that are not so urgent and make law enforcement officers potentially use the same article as the previous decision for acts of sexual extortion that occur in the future.

So that there is an urgency for the Regulation of Sexual Extortion in Online Gender-Based Violence from a Criminal Law Perspective, especially since this has been guaranteed in the constitution in Article 28G paragraph 2 of the 1945 Constitution of the Republic of Indonesia, which in essence states that everyone has the right to be free from torture or degrading behavior, and this protection is given to all citizens without exception. So the government needs to perfect the articles in the TPKS Law regarding electronic-based sexual violence, by adding the main crime of sexual extortion (extortion by utilizing the victim's intimate content and using the victim's intimate content to be used as a means of threat to be distributed if the perpetrator's wishes are not met in the form of money, sexual desires, photos/intimate content, etc.) in order to fill the legal vacuum related to these basic acts in Indonesia..

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