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**| RESEARCH ARTICLE**

## **The Right to Compensation for Victims of Image-Based Harassment in Indonesia**

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**| ABSTRACT**

The digital age is an era of rapid technological development. Image-based sexual harassment often occurs over the internet, especially on social media platforms, websites, or content sharing applications. Although the time of the incident is not simultaneous, cases like this can be experienced anywhere and anytime regardless of the situation, the sites used in this crime often include the victim's personal data, for example, the name and link to the victim's social media account. This research used a normative juridical approach. The results of the research show that images that have been uploaded on a site or social media have become public consumption, and to completely remove the images is very difficult. This pornographic image remains online which will certainly have a long-term impact on the victims who experience it. Victims of image-based harassment have serious psychological and emotional impacts, including trauma, anxiety, and depression. Victims should therefore be compensated for access to mental care and psychological support to restore their mental health. Recognition of the victim's suffering is also a form of compensation that must be made by the perpetrator, to respect the victim's rights to justice and recovery after experiencing such cases.

**| KEYWORDS**

*Compensation; Victims; Image-Based Sexual Violence*

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### **I. INTRODUCTION**

Social media can be accessed by everyone. In this modern era, almost everyone has internet and smartphones that can be used for several activities and certainly have an account on each smartphone. Certainly, there are many benefits gained from this technological advancement. However, it turns out that there are also negative impacts obtained from this. Because excessive use of social media may certainly have an impact on the physical and spiritual health of the user.

A problem that has drawn attention several times is the one-sided treatment of netizens towards a post that leads opinions on social media. These netizens usually do not seek the truth from the other party concerned and immediately decide and judge the party they think is guilty. The party who gets this one-sided treatment usually closes themselves even though they know that they are not the guilty party. However, what power if everyone judges them without letting the victim provides an explanation of the problem.

One of the most common cases of this one-sided treatment from netizens is image-based sexual harassment, commonly known as revenge porn. This case continues to increase. Cases of sexual violence have increased from 2020 to 2021 by 57,721. 33% of which are cases of image-based sexual harassment.[1]

The number of cases of gender-based violence against women (GBV) throughout 2021 is 338,496 cases, consisting of reports from The National Commission on Violence against Women or Komnas Perempuan 3,838 cases, reports from service organizations 7,029 cases, and Directorate General of Religious Courts or Badan Peradilan Agama (BADILAG) 327,629 cases. This means that there was a significant 50% increase in GBV cases against women, namely 338,496 cases in 2021 from 226,062 cases in 2020.[2] The number of case complaints decreased in 2022 from the previous year, to 457,895 from 459,094.[3]

The discourse related to GBV is a topic that is widely discussed by practitioners, academics, the community, and the mass media. Using internet technology has become an obligation that every individual must have. This has led to new modifications to violence

that occurs in the cyber world, one of which is GBV. Attacking someone's body, sexuality, and even gender identity is violence committed in this case by using digital technology facilities in doing so.[4]

Recorded in the non-consensual dissemination of intimate image / non-consensual dissemination of intimate content (NCII) report in 2021 itself there were 508 complaints (75%), 150 other complaints with other forms, and there were 19 complaints that were not identified[5]. The Southeast Asian Freedom of Expression Network Association (SAFE-net) which is a system or network that aims to provide support, services, and protection for victims of sexual assault in 2022 concerning complaints about GBV has recorded 698 complaints. Various forms of KBGO cases that have been reported, involving the distribution of indecent content without permission, threats, and public dissemination of information. The annual record of the Komnas Perempuan received as many as 1,697 complaints about complaints of KBGO cases that were recorded in 2023.[6]

Image-based sexual harassment often occurs over the internet, especially on social media platforms, websites, or content sharing applications. Images that have been uploaded on a website or social media have become public consumption and it is very difficult to remove them completely. These pornographic images continue to exist online which will certainly have a long-term impact on the victims who experience them.

Victims of image-based harassment have serious psychological and emotional impacts, including trauma, anxiety, and depression. Victims should therefore be compensated for access to mental care and psychological support to restore their mental health. Recognition of the victim's suffering is also a form of compensation that must be made by the perpetrator, to respect the victim's rights to justice and recovery after experiencing such cases. In terms of employment, many victims of image-based harassment have their economic lives affected, with victims often losing their jobs or having difficulty finding work.

## II. METHODOLOGY

The research method used is normative juridical. This method includes legal research conducted by examining library materials or secondary data [7] also called doctrinal research. In this research law is often conceptualized as what is written in laws and regulations or conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate [8].

## III. RESULTS AND DISCUSSION

### A. Causes of Victims Being Treated Unfairly in Society

Sexual harassment is not only physical but can be verbal, and others that have a sexual relationship.[9] There are various forms of sexual harassment, such as touching someone, and the person touched feels uncomfortable, and saying a sentence that has a sexual direction [10].

Here are some forms of sexual harassment that can be measured based on their levels: [10]

1. **Gender Harassment.** Gender harassment is an activity or comment that makes someone feel inferior according to their gender (sexist). Some forms include: stories that contain pornographic elements or inappropriate jokes; rude and sexually charged words targeted at a person; seduction sentences or inappropriate comments regarding the appearance of a person's body; looking in an inappropriate way or commonly known as peeping; showing, using, or distributing material that includes inappropriate things such as pornographic pictures, books, or videos.
2. **Seduction Behavior.** Seduction behavior is an act or request for something inappropriate in a sexual way or making love with vague threats. Some of its forms include: topics concerning personal or sexual matters; attempting to seduce someone; paying sexual attention to someone; having a coercive attempt to build a romantic relationship; inviting someone to perform inappropriate or obscene activities; consciously interfering with someone's privacy; making people the target of innuendo in the context of sexual talk; using harsh words that make someone sexually disturbed; and spreading sexual gossip about someone.
3. **Sexual Bribery.** Sexual bribery is an invitation to engage in sexual activity followed by a promise or reward, such as a promotion. Some forms include: performing certain sexual activities, such as hugging, touching, kissing, or caressing; openly offering gifts in exchange for satisfying one's sexual desires, etc.
4. **Sexual Coercion.** Sexual coercion or commonly known as sexual threats is a form of pressure from someone to engage in sexual activity followed by using threats, either indirectly or directly. This can occur in various situations, such as giving someone indirect sanctions for refusing sexual invitations; making direct threats so that someone complies with sexual activity; forcing someone to engage in sexual activity by utilizing feelings of fear or anxiety; and giving negative impacts to someone who has refused the requested sexual activity. These are all forms of sexual harassment that are intolerable and often violate human rights.

Image-based sexual harassment predominantly falls into the category of gender harassment because of its focus on demeaning or harassing actions based on gender. There are several reasons why victims of image-based sexual abuse are often treated unfairly

in society. These include social stigma, ignorance about the dynamics of sexual violence, and injustices in the legal and protection systems.

The main cause of this problem is the presence of smartphones or what is commonly referred to as gadgets that end up causing new crimes, namely, image-based sexual harassment. Gadgets come with a very fast development so that human behavior also develops according to this. Starting from exchanging messages that were previously sent through the postman, it has evolved to only use gadgets.

Image-based sexual harassment is one of the new criminal offenses included in the classification of cyber-crimes whose scope is in the internet media. The impact of image-based sexual harassment is huge for the victim. The reason is that information related to the victim can spread widely, including immoral content of the victim and the perpetrator.

The influence of the internet also has an impact on the identity of the victim so that the victim's daily life also changes. The victim may be ostracized by their environment on the grounds that the victim is a disgrace to their environment. This behavior can attack the victim mentally because the victim is considered to have been negligent in maintaining her privacy, which eventually the victim blames herself and even confines herself.

Social media, especially in Indonesia, is not only accessible to adults because there are no strict rules to limit this. Knowledge about sexual matters is still considered taboo so that anyone who wants to know about it can access immoral content on their social media accounts. Lack of knowledge of this matter causes many netizens or the community to be insensitive to the rights of victims that need to be fought for.

Indonesia is also still familiar with gender bias and patriarchal culture, where Gender Bias is a policy, program or activity or condition that is more inclined towards one of the sexes. Women are still considered the guardians of morality, which means that when harassment occurs, women are often blamed for many unreasonable reasons such as using minimal clothing to seduce men. Women are also still often considered as sexual objects compared to men, creating two different assessments where women are often considered inferior to men and women deserve things that should not happen to anyone, male or female.

Patriarchy is a word derived from the word 'Patriarchate' which means a structure that provides a position where the male role as someone who is the ruler lives, the center and everything. But, more simply, patriarchy can be given the meaning of a system in which adult males are placed in the central or most important position, while others are positioned according to the interests of the patriarch (adult male).

Weaknesses in the legal system and protection are also important factors. Weak law enforcement and inadequate or ineffective laws in Indonesia mean that victims are often used as perpetrators, especially in the public sphere of social media. Citizens often ignore the status of the 'victim' and continue to blame the victim if the victim acted consensually or willingly.

The long and traumatic legal process adds to the burden on victims, as they have to prove that they are victims and not perpetrators of crime. It is not uncommon for victims to go through the process of becoming a suspect or perpetrator during the legal process.

Victims of image-based harassment in Indonesia may be considered perpetrators as existing laws may not clearly distinguish between those who disseminate content without permission and those who are merely involved in the creation of such content. There are several factors that contribute to this situation:

1. Information and Transaction (ITE) Law: Indonesia's Electronic Information and Transaction Law ITE Law has articles that can be used against anyone who distributes or creates pornographic content. Article 27 Paragraph 1 of the ITE Law, for example, explains that any person who intentionally and without right distributes, transmits, or makes accessible electronic information containing moral content can be punished. This means that both victims and disseminators can be caught by the law if proven to have created or disseminated such content.
2. Lack of Legal Understanding: Many victims may not fully understand that their actions (for example, sending private pictures or videos to a partner) may be considered unlawful if the content is disseminated without permission.
3. Insensitive Law Enforcement: Law enforcement especially in Indonesia may lack sensitivity to the conditions of victims of image-based sexual harassment. In some cases, law enforcement officials may be quick to charge all parties involved without considering the dynamics of violence and coercion that may occur.

The victim needs to report it, and in Indonesia it is a disgrace. The victim will feel embarrassed because reflecting on recent events, the police only process a case if it goes viral. Meanwhile, if the case goes viral the victim will be embarrassed because they feel their shame is spread. Some of the netizens will provide support, but it is also possible that some will comment badly on the victim.

For example, there is one case that happened to a female student in Pandeglang, Banten. This case went viral on social media Twitter, where Zanatul Haeri, as the victim's sister uploaded the chronology of the case of her sister who was a victim of image-based sexual harassment by her ex-boyfriend. This case led to a judge's decision with a sentence of 6 years in prison and a fine of Rp 1,000,000,000, (one billion rupiah) in lieu of 3 months imprisonment.[11]

This disrupts the victim's psychology and can lead to depression or other mental illnesses. Victims can also lock themselves up at home, because they are embarrassed to face the people around them. Therefore, every victim of image-based sexual harassment must perform self-acceptance skills in order to protect himself regarding how he sees himself and how others see him. A person's ability to accept himself is not an easy thing to do because not everyone has the ability to accept and defend himself, especially when he has severe problems. Severe problems are certainly not the same experienced between one person and another.

Many of the victims of this image-based sexual harassment are minors. In fact, it is no secret that Indonesian children scattered in remote areas of the village have suffered mental and moral disorders due to acts of sexual violence that have now become epidemic in daily life in the village. Cases of sexual violence are generally experienced by female victims and children. The high level of sexual violence certainly has a tremendous impact on the pattern of community life.

Image-based sexual harassment has many negative impacts on its victims. Victims usually have psychological problems which can lead to depression, paranoia, anger, PTSD, anxiety, and even suicidal thoughts. The victim may also lose their job and their reputation will be damaged, which may cause the victim's relationship with the people closest to them to change.

Civil law can provide new provisions that allow victims of image-based sexual harassment to sue perpetrators for compensation without waiting for a criminal court decision. This enables victims to seek redress for their losses independently of the ongoing criminal justice process. The impact of this case was so great that it changed the pattern of the victim's daily life. As a result, the victim has many problems such as financial, health, and even psychological. This has caused the victim to have to adapt to new circumstances.

## **B. Compensation Victims Can Receive**

Image-based sexual harassment is one of the phenomena that occurs everywhere, with the existence of gadgets and wide internet access this form of sexual harassment becomes easier to do. There have been many viral incidents of vindictive ex-partners distributing private sexual images without consent.

A case that often occurs in Indonesia is that the victim is also considered a perpetrator if both of them have the same concern, namely, agreeing to carry out the activity by being recorded. However, the victim in this case does not know or agree if the recording or file is disseminated or published with any party.

It is known that the Malaysian Penal Code has harsher penalties for rape offenders compared to the sanctions stipulated in the old Indonesian Penal Code, so it is not surprising that the level of sexual violence in Malaysia continues to decline and tends to be lower than Indonesia.[12]

Overseas, this polemic has resulted in a social movement demanding legal changes to challenge and combat this form of sexual harassment. They use the concept of 'image-based sexual abuse' rather than 'revenge porn', 'non-consensual pornography', or 'forced pornography', as it more accurately reflects the nature, extent, and harm of this phenomenon. Not only does it refer to a relatively small, albeit damaging, subset of private sexual images, the term also concentrates on the motives of the perpetrator, rather than the harm to survivors.

The legal basis of compensation for image-based sexual harassment differs according to the jurisdiction or country where it occurs. There are some commonly known common law grounds such as:

1. Criminal law: the criminal law makes the crime of image-based sexual harassment or distribution of revenge pornography. It is stipulated in the Sexual Violence Crime Act or Undang-Undang Tindak Pidana Kekerasan Seksual (UU/TPKS) that the perpetrator can be charged with a specified prison term and the victim can apply for compensation or restitution for the loss they have suffered.
2. Civil law: compensation here is possible if the victim sues the perpetrator for damages for his actions. Compensation can take the form of economic, psychological, and other non-economic losses suffered by the victim. This can only be done if restitution or compensation by the victim is rejected by the court.
3. Consumer protection law: this legal basis can be invoked for redress especially if image-based sexual harassment involves practices that violate the rights of consumers.
4. Human rights law: where everyone has the right to the protection of human rights, such as the right to privacy, which can be used as a basis for claiming compensation because it is an effort to ensure respect for the fundamental rights of individuals.
5. Trade and distribution law of pornographic content: if image-based sexual harassment is used for commercial trade or distribution, then this ground can be used for claims for damages.
6. ITE law /cybercrime: if the crime occurred in cyberspace, then this provision can be the basis for claiming damages involving the use of information technology.

The issuance of the proposed Criminal Acts of Sexual Violence or TPKS Bill is based on the limited regulations related to sexual violence in the Criminal Code, which has resulted in many cases of sexual violence that cannot be processed legally. Article 14 of Law No.12 of 2022 concerning TPKS Law Paragraph (1) states:

Any person who is without rights:

- a. recording and/or taking sexually charged images or screenshots against the will or 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 that are sexually charged against the will of the recipient that is directed towards sexual desires; and/or
- c. 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 imprisonment of 4 (four) years and/or a maximum fine of IDR200.000.000,00 (two hundred million rupiah).

Furthermore, Article 14 Paragraph (2) of the TPKS Law also states "In the event that the act as referred to in paragraph (1) is committed with the intention:

- a. to commit extortion or threaten, coerce; or
- b. mislead and/or deceive someone into doing, allowing to be done, or not doing something, shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR.300.000.000,00 (three hundred million rupiah)."

It is also stated in Article 16 Paragraph (1) of the TPKS Law "In addition to imprisonment, fines, or other penalties according to the provisions of the Law, judges are obliged to determine the amount of restitution for sexual violence crimes that are punishable by imprisonment of 4 (four) years or more."

As in Article 45 Paragraph (1) of the ITE Law which states: "every person who fulfills the elements as referred to in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 years and/or a maximum fine of IDR1,000,000,000.00 (one billion rupiah). We can convey that based on the provisions of Article 42 of the Criminal Code which explicitly states that all costs for imprisonment and confinement are borne by the state, and all revenues from fines and forfeiture become the property of the state.

There is no comprehensive regulation on compensation for victims of crime in Indonesia, but compensation has a concept based on the same thing, namely the restoration of the initial position or condition for the party who feels harmed. The obligation to provide compensation for a matter caused by a party who does not fulfill an obligation to an agreement or commit an act against the law or contrary to legal provisions.

In this case, the one who suffers losses from the actions of the perpetrator is the victim. The victim specifically experiences material and immaterial losses. Immaterial losses experienced by victims usually lead to material losses where victims must pay hospital fees related to their physical and mental health, victims can also be alienated by their environment so they must find a new environment, and it is not uncommon for victims to apologize for the activities carried out by the perpetrator. Victims in image-based sexual harassment are usually women, which is a disgrace for women.

The state in this case received a fine paid by the perpetrator and entered the state treasury, but the victim did not receive compensation for the damage that had been experienced during the case. Overseas, the HIGH COURT OF JUSTICE KING'S BENCH DIVISION in London on February 27, 2023 heard a case between FGX (a woman) as the claimant and Stuart Gaunt as the defendant.

In point 6 of the judgment, FGX was awarded general damages of £60,000 and special damages of £37,041.61 for consequential financial loss, bringing the total damages to £97,041.61 which is equivalent to IDR 1,661,380,376.37 if converted. FGX was awarded these damages due to her claims regarding the secret recording of her nude images and their subsequent publication on pornographic websites. The case was decided under Sexual Offences (Amendment) 1992 section 3.

In California there was a case between David Elam II (defendant) and Jane doe (plaintiff) that applied California Civil Code 3294, California Penal Code 502 (e) (4) & 528.5 with total compensation of \$6,450,000 or equivalent to Rp104,845,395,000.00. California Civil Code 3294.

A similar case also occurred in Texas, where a Texas jury awarded \$1.2 billion in damages (which is equivalent to Rp 20,544,346,406,097.36) to a woman after deciding that she was the victim of image-based harassment.

Even abroad, the term "revenge porn" is no longer used, as seen in a decision by the High Court of Justice King's Bench Division in London. The court stated that while the term is often used to describe the defendant's behavior, it implies that the victim, in some way, deserved what happened to them. The description suggested by Counsel and used in this judgment is "image-based sexual harassment".

Overseas, some countries have adopted laws or regulations that specifically address cases of image-based sexual harassment and provide a basis for claims for damages. The legal approach may vary from country to country. Some examples of countries that have taken steps to address image-based sexual harassment include the United States, the United Kingdom, and Australia. Here are some examples of cases or legal developments in some of these countries:

1. United States of America  
In some US states, image-based sexual harassment laws have been enacted, and victims can seek damages from perpetrators. Some high-profile cases, such as the "Hunter Moore" case in 2015, show that criminal penalties and punitive damages can be applied.
2. English  
In the UK, laws on image-based sexual harassment have been enacted, making the act a crime. Helplines like the "Revenge Porn Helpline" in 2015 show how victims can claim their rights.
3. Australia  
Several states in Australia have enacted laws to ban revenge porn, and victims can sue for damages. Both criminal and civil penalties can be applied, as reflected in some legal cases.

Hunter Moore is an individual known for founding a website called "Is Anyone Up?" that provides a platform for revenge porn, which is the posting of private and explicit images without the permission of the victim. Here is a summary of the Hunter Moore case in the United States:

Hunter Moore founded this website in 2010 that allowed users to submit explicit nude photos of their ex-partners without permission. The site gained popularity but also attracted a lot of criticism and controversy as it involved invasion of privacy and dissemination of unauthorized images. In 2012, Hunter Moore announced that he would shut down the "Is Anyone Up?" site at the urging and outcry of the public as well as the anti-revenge porn campaign. In 2014, Hunter Moore and his business partner, Charles Evens, were arrested by US federal authorities. They were tried on several charges, including pleading guilty to violations of the Child Protection on the Internet Act (CDA) related to the dissemination of indecent content involving children.

In 2015, Hunter Moore was sentenced by a US federal court. He was convicted of several charges, including violation of the Child Protection Act on the Internet and fraud. The sentence involved imprisonment and payment of fines. Hunter Moore's case demonstrates the legal repercussions that can be applied against individuals who engage in the dissemination of image-based sexual harassment and invasion of privacy.

Stricter laws and increased public awareness have helped address this issue in the United States.

In the UK, an organization called "Revenge Porn Helpline" was created. Revenge Porn Helpline is an organization that aids victims of image-based sexual abuse to help them cope with the emotional and legal repercussions of unauthorized sharing of private content. Here is general information about Revenge Porn Helpline:

Revenge Porn Helpline was established to provide emotional support and legal assistance to victims of image-based sexual abuse in the UK. They provide information on victims' rights, legal steps that can be taken, and how to report cases to the authorities. The service provides legal assistance as well as providing emotional support to victims who may be experiencing stress and trauma due to the dissemination of their private content.

Revenge Porn Helpline assists victims of image-based sexual harassment from various backgrounds, including cases involving ex-partners or perpetrators who aim to harm victims. Revenge Porn Helpline has collaborations with legal institutions, authorities, and other organizations to raise awareness about revenge porn and provide solutions for victims.

On its website Revenge Porn Helpline describes that "We are a UK service that supports adults aged 18 and over who have encountered image-based sexual abuse, also known as revenge porn. The helpline was established in 2015 following legislation that made it an offense to share intimate images or videos of someone, either online or offline, without their permission with the intention of causing them distress. The helpline is run by a small team of passionate and motivated individuals who are ready to help."

In Indonesia, there are several organizations and services that provide assistance to victims of sexual harassment. Some of them are:

1. National Commission on Violence Against Women (Komnas Perempuan)  
Komnas Perempuan is a state institution tasked with eliminating all forms of violence against women. They provide advocacy, consultation, and legal aid for victims of sexual violence.
2. Witness and Victim Protection Agency (LPSK)  
LPSK provides protection for witnesses and victims of crime, as well as sexual violence. They provide physical protection, medical, psychological, and other assistance.

3. Foundation Recovers  
The foundation focuses on trauma recovery for victims of violence, including sexual violence. They provide counseling services and psychosocial support.
4. Rifka Annisa Women's Crisis Center  
Rifka Annisa is an organization that provides services to women and children who have been affected and become victims of violence, including sexual violence. Services provided include counseling, advocacy, and education.
5. Emergency Hotline Service  
Some organizations provide emergency hotlines that victims of sexual violence can call for immediate assistance, such as Komnas Perempuan: (021) 3903963, Yayasan Pulih: (021) 78842580.
6. Women and Child Services Unit (PPA) in the Police Force  
Every police station in Indonesia has a special unit that handles cases of violence against women and children, including sexual violence. They can provide legal assistance and protection for victims.

In addition to these institutions, many hospitals and community health centers (Puskesmas) also have special services to deal with victims of sexual violence, including medical examinations and counseling.

Public awareness or victims are becoming better because many victims have filed complaints about the violence or harassment they have experienced. This can be seen from the increase in complaints recorded on several websites of organizations handling these cases in Indonesia. This is certainly not good news, but at least people are more aware of the crime of image-based sexual harassment.

#### IV. CONCLUSION

The significant advancement of technology has led to new crimes, one of which is image-based sexual harassment. Image-based harassment is more dominant in the category of gender harassment. The number of cases of image-based sexual harassment is not small. Image-based sexual harassment is becoming an increasingly troubling phenomenon, especially with technological advances that allow the non-consensual dissemination of personal images or videos quickly and widely. Victims of harassment often face unfair treatment in society, with social stigma, lack of understanding of the dynamics of sexual violence, gender bias, and weaknesses in legal systems and protection.

Damages that can be obtained by victims of image-based sexual harassment can be obtained materially and immaterially. Some countries have adopted laws or regulations that specifically address cases of image-based sexual harassment and provide a basis for claims for damages. There is no clear regulation on this issue in Indonesia itself.

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