

## REGULATION AND LEGAL PROTECTION OF SEXTORTION AS ELECTRONIC-BASED SEXUAL VIOLENCE IN INDONESIA

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### ABSTRACT

Electronic-based sexual violence in Indonesia has increased compared in prior years, one of which is sextortion. Practice of handling sextortion cases in Indonesia show that law enforcement institution only focus on the dissemination of victim sexual content, without following up with extortion and threats to perpetrators, also the absence of victims protection. Victims comply with the wishes of perpetrators and not brave enough to report because victims are worried that victim sexual content will be disseminated. Normative legal research is a research method are used by analyzing literature research, statutory research, and case study. The research results show that Article 14 Law Number 12 of 2022 on Sexual Violence Criminal Act can be used in handling sextortion cases because it has a more accommodating formulation and form of punishment, also provides comprehensive protection of victims.

**Keywords:** Sextortion; Electronic-Based Sexual Violence; Sexual Offences

### A. Introduction

Gender-based violence has increased compared in prior years, according to data from the CATAHU Tahun 2023 Komnas Perempuan. Data shows that violence in the cyberspace is the highest, based on Komnas Perempuan data.<sup>1</sup> Cyberspace and public spaces are the most unsafe places for gender-based violence. Furthermore, the most frequently reported forms and types of violence are sexual violence, with numerous cases of electronic-based sexual violence.<sup>2</sup> Besides violence against women, data on child victims of violence also shows that sexual violence are the highest number of cases involving children as victims. It means, sexual violence are the highest number of violence cases against women and children.<sup>3</sup>

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1 Komnas Perempuan, *Catatan Tahunan Tentang Kekerasan Terhadap Perempuan 2022: Kekerasan Terhadap Perempuan Di Ranah Publik dan Negara: Minimnya Perlindungan dan Pemulihan* (Jakarta: Komnas Perempuan, 2023), 60-62.

2 *Ibid.*

3 KPAI, "Catatan Pengawasan Perlindungan Anak Di Masa Transisi Pandemi; Pengasuhan Positif, Anak Indonesia Terbebas Dari Kekerasan," Komisi Perlindungan Anak Indonesia, 2023, <https://www.kpai.go.id/publikasi/catatan-pengawasan-perlindungan-anak-di-masa-transisi-pandemi-pengasuhan-positif-anak-indonesia-terbebas-dari-kekerasan>.

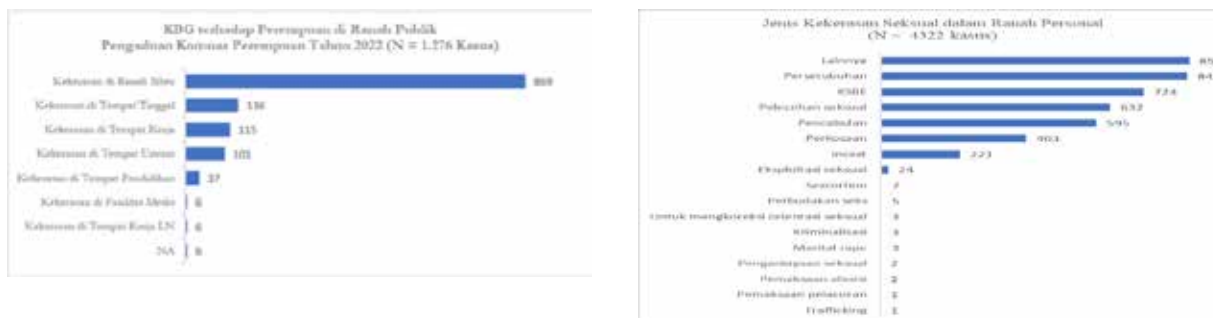


Diagram 1. Gender-based Violence Against Women 2022



Diagram 2. Cases of Child Victims of Violence

Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (Law on Sexual Offences) introduced in May 2022 has refined the definition of criminal acts of sexual offences and criminalized its forms and types, one of which is electronic-based sexual violence. Facility of communication and information access through internet has resulted in cases occurring in the cyberspace, including electronic-based sexual violence, which is technological harassment of the victim's gender or sexual identity.<sup>4</sup> Most frequently reported of electronic-based sexual violence involves the dissemination of sexual explicit photos or videos of the victim. One of the most sexual offences cases of electronic-based sexual violence in Indonesia is sextortion.

Sexual offences is the most common case against women and children, and electronic-based sexual violence cases against women and children have increased with facility of access to information and communication. The urgency of this paper is because in practice, handling sextortion cases as electronic-based sexual violence only focuses on the act of extortion as a crime against property, whereas sextortion as electronic-based sexual violence is Law on Sexual Offences, where the perpetrator requests sexual content from the the victim, even sexual intercourse. The victim complied with the perpetrator's demands and not brave enough to report because she was deeply concerned about the distribution of the victim sexual content. Furthermore, overlapping laws regarding the handling of sextortion cases potentially complicate matters for law enforcement.

4 Hikmawati, P., "Pengaturan Kekerasan Berbasis Gender Online: Perspektif Ius Constitutum dan Ius Constituendum," *Negara Hukum*, Vol. 12, No. 1 (2021): 61. <https://dx.doi.org/10.22212/jnh.v12i1.2124>.

There is no equivalent for the word sextortion in kamus bahasa Indonesia, but it can be defined as extortion involving sexual content obtained through hacking or provided by the victim. The perpetrator then misuses the victim's sexual content as a threat to extort the victim for sexual content or material.<sup>5</sup> There has even been the distribution of sexual explicit photos or videos of the victim, often in the form of deepfake porn, where the perpetrator takes the photo or video from the victim's social media and then edits it to appear as if the photo or video contains the victim's face, thus creating a sexual image. Various motives and chronologies for victims of sextortion cases exist, including friendships or relationships, sudden calls from strangers, and the perpetrator immediately exposing their genitals while pretending to be on a WhatsApp video call.<sup>6</sup>

There are several decisions regarding the practice of handling sextortion cases in Indonesia, First, court number 217/Pid.B/2018/PN Bna. Second, court number 466/Pid. Sus/2021/PN Bks. Third, court number 71/Pid.Sus/2023/PN Pdl. Based on the court decisions regarding sextortion cases, law enforcement institution handling sextortion cases use Article 368 Paragraph (1) of the Criminal Code and Article 27 Paragraph (1) of The Law on Electronic Information and Transactions. Based on the facts from the court decisions regarding sextortion cases, the victim complied with the perpetrator's wishes to create sexual content and engage in sexual intercourse due to the perpetrator's threats of violence.

Sextortion is regulated in Article 14 of Law on Sexual Offences. The problem in the practice of handling sextortion cases is the element of "extortion or threats, coerce" in sextortion differs from extortion under the Criminal Code as a crime against property. This contrasts with the reality that sextortion perpetrators not only demand money, but also sexual content from the victim and even sexual intercourse. Furthermore, law enforcement institution in the practice of handling sextortion cases only focus on the dissemination of sexual content from the victim, rather than on the extortion and threats of the perpetrator. Furthermore, the victims do not report sextortion perpetrators because they are very worried about the victim sexual content will be uploaded. Finally, the overlap between laws in handling sextortion cases has the potential to make it difficult for law enforcement and the victims to achieve justice, even though Law on Sexual Offences is based on the principles of justice and the best interests of the victims in Article 2 of Law on Sexual Offences. These things certainly do not optimize the victim protection, as well as punishment and rehabilitation for perpetrators.

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5 Jordy Herry Christian, "Sexstorsi: Kekerasan Berbasis Gender Online Dalam Paradigma Hukum Indonesia," *Binamulia Hukum*, Vol. 9, No. 1 (2020): 84, <https://doi.org/10.37893/jbh.v9i1.364>.

6 Nisa Hanifah Nur Syarifa dan Yasmine Nathifa Zahira, "Mengungkap Kengerian Sextortion: Ketika Privasi Diperdagangkan untuk Mengintimidasi," *Medium*, 2023, <https://economica.medium.com/mengungkap-kengerian-sextortion-ketika-privasi-diperdagangkan-untuk-mengintimidasi-5e2db427264b>.

This research will focus on sextortion as a form of electronic-based sexual violence under Law on Sexual Offences, both in terms of its legal basis and legal consequences. The following research has been conducted, First, “Pertanggungjawaban Pidana Pelaku Sextortion dalam KBGO,” a study that examines sextortion as electronic-based sexual violence according to law before Law on Sexual Offences introduced and focuses on the criminal liability of sextortion perpetrators as electronic-based sexual violence. This study was written by Fikri Chandra Permana. Second, a study by Eko Nurisman about “Risalah Tantangan Penegakan Hukum TPKS Pasca Lahirnya UU TPKS,” examines criminal legal instruments regarding Law on Sexual Offences and focuses on protecting victims in general.

This research will discuss about the application of Law on Sexual Offences in handling sextortion cases as electronic-based sexual violence in Indonesia, as well as legal protection for the victim. First, the regulation and legal protection of sextortion as electronic-based sexual violence in Indonesia. Second, analysis of sextortion cases and the application of Law on Sexual Offences in handling sextortion as electronic-based sexual violence.

## **B. Research Method**

Normative legal research is a research method in this legal writing through the search and review of literature or secondary data with a descriptive analysis. The data used are primary and secondary data, using qualitative analysis through a criminal law approach. Primary data is used as long as it supports secondary data, while secondary data consists of primary, secondary and tertiary legal materials. The data used include laws, court decisions, other library data, and interviews related sextortion cases in Indonesia. Based on this data, legal interpretation and legal reasoning are then conducted through legal arguments explaining the regulation and legal protection of sextortion as electronic-based sexual violence in Indonesia.

## **C. Discussions**

### **1. The Regulation and Legal Protection of Sextortion As Electronic-based Sexual Violence in Indonesia**

Crime is defined as a criminal event or a criminal circumstance by the Hoge Raad.<sup>7</sup> In addition to the act or behavior and the error (*schuld*), offender's mental state at the time of a crime is also required in a criminal act. Furthermore, this definition also addresses criminal responsibility that can be sought if the perpetrator's guilt is proven.

Sextortion can be defined as a threat to the victim to comply with the perpetrator's wishes, which is not always about money or financial. It can also involve the victim not complying with the perpetrator's wishes, leading the perpetrator to upload explicit content material as revenge. Sextortion is a cybercrime that exploits sexual content to extort material

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<sup>7</sup> P.A.F. Lamintang & Franciscus Theojunior Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 1984), 191.

or sexual favors from the victim.<sup>8</sup> If the perpetrator and the victim are related by marriage or marriage, intimate photos and/or videos of the victim are used by the perpetrator to threaten the victim not to proceed with divorce or end the relationship.<sup>9</sup> A study by ECPAT International that the characteristics of sextortion by the perpetrator against the victim include a power relationship, psychological violence, generally in the form of threats, requests for sexual activity, and access to the victim's sexual content to harm the victim. In some cases, the victims also experience physical violence, intended to intimidate them into complying with the perpetrator's wishes.<sup>10</sup> Furthermore, the victims of sextortion may find it difficult to return to online or in-person activities.

There is no law that regulates sextortion as electronic-based sexual violence. Law enforcement institutions use the Criminal Code or Law on Electronic Information and Transactions. First, Articles 281 to 299 of the Criminal Code, as well as Article 368 Paragraph (1) of the Criminal Code regarding extortion in sextortion cases by exploiting the victim's sexual content. Second, The Law on Electronic Information and Transactions, which regulates the prohibition on the public dissemination of content containing indecency. Acts of extortion and threats of violence are regulated in Article 27B Paragraph (1) and Article 45 Paragraph (8) of The Law on Electronic Information and Transactions and Article 27B Paragraph (2) and Article 45 Paragraph (10) of The Law on Electronic Information and Transactions regarding the prohibition on the dissemination of content for personal gain accompanied by threats of violence to induce the victim to comply with the perpetrator's material desires. Furthermore, The Law on Electronic Information and Transactions regulates the actions of perpetrators who send content containing threats of violence and intimidate their victims.

The Law on Electronic Information and Transactions are not yet comprehensive enough to regulate sextortion. The Law on Electronic Information and Transactions only focuses on the dissemination of content that violates decency for public access, as the Criminal Code requires that such acts occur in an open space or public place.<sup>11</sup> This means that the definition of violating decency must be referred to the Criminal Code's section on crimes against decency.<sup>12</sup>

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8 Hikmawati, P., *Op.Cit.*, 63.

9 Wulansari, Tenaga Ahli Pemenuhan Hak Korban UPT P2TP2A Dinas PPAPP Provinsi DKI Jakarta.

10 Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, *Buku Panduan Internet Aman untuk Anak Pencegahan Eksploitasi Seksual Anak di Internet* (Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2019), 23.

11 R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal* (Bogor: Politeia Bogor, 1988), 206.

12 Adami Chazawi, & Ardi Ferdian, *Tindak Pidana Informasi & Transaksi Elektronik Penyerangan Terhadap Kepentingan Hukum Pemanfaatan Teknologi Informasi dan Transaksi Elektronik* (Malang: Media Nusa Creative, 2015), 38.

Article 27B Paragraphs (1) and (2) of the Law on Electronic Information and Transactions concerning extortion and threats contain unclear provisions because the elements of extortion and/or threats are two distinct elements.<sup>13</sup> The definition of extortion and/or threats refers to the Criminal Code, where the perpetrator's goal is to get the victim to provide something or to pay a debt. Furthermore, extortion and threats are categorized as crimes against property under the Criminal Code. Perpetrators of sextortion may consent to photographing the victims naked or recording sexual acts, but they do not expect these photos and/or videos to be used to threaten, blackmail, or control them into complying with the perpetrator's wishes.<sup>14</sup> In this case, the victims are vulnerable to re-victimization and criminalization because they are also exposed to the sexual content, as defined by the Law on Electronic Information and Transactions and the Pornography Law. This creates legal uncertainty because law enforcement institution use subjective judgments regarding the victim's sexual content, created and owned by the victim.

Indonesian positive law is not enough to protect the victims of sextortion. Handling sextortion cases involves not only regulating the act of sextortion, but also ensuring justice and legal certainty for the victims. The victims are trapped in a vicious cycle of criminal prosecution if they report the perpetrator using the Law on Electronic Information and Transactions, but they are actually afraid of being reported back using the Law on Electronic Information and Transactions.<sup>15</sup> Furthermore, the legal process in this case remains very weak, including issues with providing evidence, jurisdictional issues, limited sextortion experts, victim-blaming in the handling of sexual offences cases, limited availability of digital forensic tools, and the understanding or attitudes of law enforcement institution regarding sextortion.<sup>16</sup>

Law on Sexual Offences has refined the definition and criminalized various forms of sexual offences. Examining Article 1 number 1 of Law on Sexual Offences, there are two aspects related to sexual offences in Indonesian law.<sup>17</sup> First, sexual offences can be identified or classified into nine forms, including Electronic-Based Sexual Violence. Second, all acts under other laws that also criminalize sexual offences. Sextortion focuses on the victim's sexual content, followed by threats to force the victim to comply with the perpetrator's wishes. While not all forms of Electronic-Based Sexual Violence are regulated by Article 14 of Law on Sexual Offences, it can at least cover several common acts, namely distributing or transmitting sexual content through recording, stalking, or tracking, which is

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13 Maidina Rahmawati, *Menelisis Pasal Bermasalah dalam UU ITE: Pasal 27 (4) tentang Pemerasan dan Pengancaman* (Jakarta: Institute for Criminal Justice Reform, 2021), 9.

14 Ratna Batara Munti, Emma Mukarramah, & Maidina Rahmawati, *Laporan Penelitian Needs assessment: Analisis Tantangan Implementasi dan Kebutuhan Operasionalisasi Undang-Undang Tindak Pidana Kekerasan Seksual (UU TPKS)* (Jakarta: International NGO Forum for Indonesian Development, 2022), 88.

15 Maidina Rahmawati, *Loc.Cit.*

16 Wulansari, *Tenaga Ahli Pemenuhan Hak Korban UPT P2TP2A Dinas PPAPP Provinsi DKI Jakarta.*

17 R. Valentina Sagala, *100 Tanya Jawab Seputar Kekerasan Seksual (Sejak Diberlakukannya Undang-Undang Tindak Pidana Kekerasan Seksual)* (Jakarta: Penerbit Gramedia Pustaka Utama, 2022), 4.

used as threats, and deceiving the victim.

The facts found in the field regarding sextortion are far more complex. First, the victims do not report the perpetrators of sextortion because they are powerless and deeply worried that the perpetrators will share their sexual content on social media with their parents and friends. Consequently, the victims comply with the perpetrator's wishes to prevent the distribution of the sexual content. Second, the victims need is to protect the victim's sexual content from the perpetrator, such as by removing and/or blocking access to the victim's sexual content. Third, the reality is that when sextortion perpetrators photograph and/or record the victim, they may consent, but the victim does not expect the photos and/or videos to be used to threaten or control the victim into complying with the perpetrator's wishes.<sup>18</sup> Furthermore, the element of threats or coercion in sextortion differs from extortion under the Criminal Code, which is a crime against property. This contrasts with the reality in the field where sextortion perpetrators not only demand money, but also sexual content and sexual intercourse.

The explanation above illustrates how sextortion, as a form of sexual offences, is carried out and its regulation under Indonesian positive law. Regarding the reality in the field, the complexity of sextortion cases presents obstacles to their handling by law enforcement institution. The following sub-discussion will outline and analyze the handling of sextortion cases in Indonesia and the application of law on sexual offences.

## **2. Analysis of Sextortion Cases and The Application of Law on Sexual Offences In Handling Sextortion As Electronic-based Sexual Violence**

Sextortion is categorized in several countries, such as the United States, which adheres to Anglo-Saxon law, as a cybercrime. Regulation of sextortion in some states is still not optimal due to disparities in handling sextortion cases between the federal and state levels. In Indonesia and France, which adhere to civil law, there are no specific regulations regarding sextortion. However, sextortion can be linked to money laundering, extortion, and corruption.<sup>19</sup>

In handling sextortion cases, law enforcement institution use Article 368 paragraph (1) of the Criminal Code (KUHP) as a crime against property through violence and threats intended to benefit the perpetrator. The definition of violence and threats as using force or power refers to Article 89 of the Criminal Code. This can be exemplified by using weapons, hitting, and similar means with the aim of rendering the person unconscious.<sup>20</sup> Regarding this, the Hoge Raad also argues that threats are also given, such as to shoot the victim if the perpetrator's demands are not met.<sup>21</sup>

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18 Ratna Batara Munti, Emma Mukarramah, & Maidina Rahmawati, Op.Cit, 88.

19 Ceren Küpeli, "Legal Analysis of Sextortion Crime in The Comparative Law And Turkish Law," *Journal of Scientific Perspectives*, Vol. 3, No. 5 (2019): 90, <https://doi.org/10.26900/jsp.3.045>.

20 R. Soesilo, Op.Cit, 256-257.

21 P.A.F. Lamintang & Theo Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Kepentingan Hukum Negara* (Jakarta: Sinar Grafika, 2010), 72.

The case from Banda Aceh District Court Number 217/Pid.B/2018/PN Bna is a sextortion case that use Article 368 of the Criminal Code Paragraph (1) of the Criminal Code. The victim was photographed by the Defendant in a nude state at the victim's house during their dating relationship. At one time, the Defendant sent the nude photos to the victim, the victim's child, and the victim's family with a request for three million four hundred thousand rupiah to the victim. If the victim cannot comply with these wishes, the perpetrator used the nude photos as a threat to be spread on social media. Then, the Defendant invited the victim to meet. The victim agreed to meet and gave the amount of money requested by the Defendant at a coffee shop. However, after the money was given, the Defendant did not delete the nude photos of the victim from the Defendant's cellphone, also the nude photos that have been distributed.

In the sextortion case at the Banda Aceh District Court, the panel of judges in this decision sentenced the Defendant to two years in prison because the crime of extortion with Article 368 Paragraph (1) of the Criminal Code. Article 368 Paragraph (1) of the Criminal Code cannot be used in handling sextortion cases. First, the violence referred to in this provision is the use of force to render someone unconscious or an act using strong force with great strength. This contrasts with the violence in the sextortion case. Therefore, photos and/or videos of the victim containing sexual content used for extortion do not fall within, or are difficult to define as, violence as defined by Article 368 Paragraph (1) of the Criminal Code. This provision also focuses only on general threats. Second, the crime of extortion does not provide the victim protection. The victim do not get their rights in mental and social rehabilitation. The victim also does not get any guarantee from law enforcement institution to removing and/or blocking access to the nude photos that have been distributed.

In other sextortion cases, the Law on Electronic Information and Transactions is used in handling sextortion cases because the law enforcement institution focus on the distribution of the victim sexual content to the public as the Electronic Document and Information. The case from Bekasi District Court Number 466/Pid.Sus/2021/PN Bks with the Law on Electronic Information and Transactions. The defendant and the victim were dating through social media, and he asked the victim to take nude selfies in front of a mirror, which the victim sent via Line. On one occasion, the defendant became angry and forbade the victim from attending school, demanding that the victim send him money, credit, and internet data. On another occasion, the defendant frequently asked the victim to make nude video calls with him, either in the bathroom or in her bedroom, and he also instructed the victim to perform oral sex during these video calls. He threatened her and promised not to share previous selfies if she agreed to participate in another nude video call.

The defendant, who had access to the victim's Instagram account, posted a semi-nude photo of the victim and changed the account name. He also sent a video of the victim's oral sex to her friends via Direct Message on her Instagram account. As a result of these posts,

the victim's school asked her to withdraw from the school. Based on these facts and the panel of judges considerations, the defendant was sentenced to two years and six months in prison and a fine of one hundred million rupiah. The public prosecutor in his indictment did not charge defamation and extortion accompanied by threats. Furthermore, considering the impact on the victim, the perpetrator could be subject to a more severe sentence.

The panel of judges should be able to impose a maximum sentence considering the impact on the victim as children, also the perpetrator committing sextortion more than once against the victim as children. With Article 14 of Law on Sexual Offences, the perpetrator can get a sentence of up to eight years in prison and a penalty of four hundred million rupiah because the perpetrator continued to distribute sexual content about the victim to the public without regard for whether the victim complied with the perpetrator's wishes. In this case, the law enforcement institution used the Law on Electronic Information and Transactions, which focuses solely on the distribution of sexual content about the victim, without any subsequent acts of threats. In addition to the Law on Electronic Information and Transactions, the Law on Sexual Offence can be applied in this case. Article 70 of The Law on Sexual Offence provide the victim protection such as medical and social rehabilitation, restitution, provision of educational facility, and removing and/or blocking access to the victim sexual content.

Another sextortion case that also use the Law on Electronic Information and Transactions is the Pandeglang District Court Number 71/Pid.Sus/2023/PN Pdl. Two sexually explicit videos of the victim during their relationship were recorded and stored on the Defendant's cellphone. One occurred in 2020, when the victim was studying together at the Defendant house. Another occurred in 2021, when the victim went to the Defendant house to confide in him because her parents had just left her. Afterward, the victim was forced to drink alcohol.

While the victim was in Jakarta, the Defendant asked her to return to Pandeglang because he wanted to have sex with her, but she refused. The Defendant then demanded that the victim make a sexually explicit video of herself, but she refused. The video, taken before, was used as a means of threatening the victim, so she agreed to make and record a sexually explicit video of herself in the bathroom, touching her genitals, which was sent via WhatsApp. The victim then asked to end the relationship. The victim's previously sexually explicit video was then used as a tool to threaten the victim not to end their relationship because the Defendant did not want to end their relationship. Ultimately, the Defendant distributed the victim's sexually explicit video content via Instagram direct messages to the victim's friends and relatives because he was annoyed that the victim always asked to break up with them, and threatened to also distribute it to the victim's lecturer because he was annoyed that the victim was busy with his studies. Finally, the panel of judges in this decision sentenced the Defendant to six years in prison and to pay one billion rupiah.

The panel of judges has imposed the maximum sentence on the Defendant using Article 45 Paragraph (1) Juncto 27 Paragraph (1) The Law on Electronic Information and Transactions because the Defendant was proven to have distributed content that violated morality. The panel of judges also considering that the Defendant purpose was to threaten the victim witness physically, verbally, and sexually, also distributing the victim sexual content was to prevent the victim from breaking off their relationship and fulfill the Defendant sexual desire. However, Article 14 of Law on Sexual Offences is more appropriate to use in this sextortion case because the purpose of the Defendant purpose in threatening and distributing the victim sexual content is fulfill the Defendant sexual desire.

Based on the facts at trial in the sextortion case at the Pandeglang District Court, the victim complied with the perpetrator's wishes to create sexual content and engage in sexual intercourse due to the perpetrator's threats of violence. The victim did not dare to report the perpetrator due to the lack of protection, even though protecting the victim would have a multiplier effect because protection not only fulfills the victim's rights but also exposes the perpetrator's actions through the victim's courage to report.<sup>22</sup> The Law on Electronic Information and Transactions used in this case only focuses on the element of disseminating indecent content, which the Criminal Code requires must be done in an open and public place.<sup>23</sup> The Law on Electronic Information and Transactions also preventing the judge from being able to impose a maximum sentence, because there is no additional penalties in The Law on Electronic Information and Transactions. Dissimilar with Article 14 of Law on Sexual Offences with six years in prison and a penalty of three hundred million rupiah that can be added additional penalties for perpetrator under Article 15 of Law on Sexual Offences shall be increased by 1/3 (one third). The reason the perpetrator can be added additional penalties because the perpetrator committing sextortion more than once against the victim and use the sexual content for threatening and spreading to prevent the victim from breaking off their relationship and commit another sexual crime, also the victim suffered serious injuries and severe psychological impact.

Law on Sexual Offences has a formulation that better accommodates sextortion cases. The victims can still report recordings of sexual content without their consent that will be used to threaten them, without the perpetrator having to first disseminate the content to the public. Sextortion is not specifically mentioned in the Law in Sexual Offences, but in a discussion meeting between the Government Working Committee and the House of Representatives in 2022, sextortion was explained as a criminal act included in the formulation of Article 6 letter c of the Law on Sextortion Offences.<sup>24</sup> This can be related to the facts in the sextortion case at the Pandeglang District Court, where the perpetrator

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22 Lies Sulistiani, *Hukum Perlindungan Saksi dan Korban: Telaah pada Regulasi, Kelembagaan, Teori Maupun Praktik Perlindungan Saksi dan Korban Tindak Pidana di Indonesia* (Bandung: Refika Aditama, 2023), 12.

23 R. Soesilo, *Op.Cit.*, 206.

24 R. Valentina Sagala, *Op.Cit.*, 19-20.

used the victim's sexual content to solicit sexual intercourse, ask the victim to record their sexual activity, and ask the victim not to end their relationship with the perpetrator. From these facts, sextortion as electronic-based sexual violence can be qualified under Article 14 of Law on Sexual Offences. Electronic-based sexual violence is a complaint offense, but is excluded if the victim is a child. In addition, the element of being against the will or without the victim's consent is also removed if the victim is a child.

The reality on the ground regarding electronic-based sexual violence is that the element of sexual consent or non-consent in Article 14 of Law on Sexual Offences conflicts with the facts on the ground. The perpetrator may have consented to photographing and/or recording the victim, but the victim does not expect the photos and/or videos to be used to threaten, blackmail, or control the victim into complying with the perpetrator's wishes.<sup>25</sup> This is not a problem and can still be prosecuted under Article 14 of Law on Sexual Offences. If, in a sextortion case, the perpetrator and the victim create sexual content with the victim's consent, and then at some point the perpetrator threatens to use the sexual content, the act can still be categorized as electronic-based sexual violence. Furthermore, Article 14 of Law on Sexual Offences can still criminalize perpetrators who, even if they do not make threats, but distribute sexual content without the victim's consent.

One issue following the enactment of Law on Sexual Offences in handling sextortion cases is the concern about overlap between the The Law on Electronic Information and Transactions and Law on Sexual Offences, which could make it difficult for law enforcement institution and the victims to seek justice. The Law on Electronic Information and Transactions, concerning sexual or immoral content, stipulates that the act of disseminating immoral content must occur in an open space or public place.<sup>26</sup> Furthermore, Article 27B Paragraphs (1) and (2) of the Law on Electronic Information and Transactions, which prohibits the dissemination of content for personal gain accompanied by threats of violence to induce the victim to comply with the perpetrator's material desires, also differs from the facts in sextortion cases. The formulation of the threat of violence refers to the perpetrator using force or power, so it does not constitute a threat of violence in sextortion cases, as in the three previous sextortion case decisions. Finally, the victims sometimes become trapped in the criminal cycle of the Law on Electronic Information and Transactions due to the dilemma and fear of being reported back by the perpetrator under the Law on Electronic Information and Transactions, resulting in a lack of protection for the victims in this regard.

Chapter II of Law on Sexual Offences contains two elements: Article 14, which regulates electronic-based sexual violence and the provision of aggravated criminal penalties.<sup>27</sup> Article 14 Paragraph (1) comprises three forms of sexual harassment: first, recording and/or taking sexually explicit images or screenshots against the will or without the consent of the

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25 Ratna Batara Munti, Emma Mukarramah, & Maidina Rahmawati, *Op.Cit*, 88.

26 R. Soesilo, *Op.Cit*, 206.

27 R. Valentina Sagala, *Op.Cit*, 34-37.

person being recorded. Furthermore, the means of extortion in these provisions are carried out with violence and threats of violence, namely efforts to make someone unconscious or an act using strong forces with great strength. This is different from extortion carried out in sextortion cases, namely using technology or information and/or electronic documents. If referring to the definition of extortion in the Criminal Code, sextortion cannot be categorized as extortion because it does not always involve wealth. Furthermore, the element of sexual consent or without sexual consent in Article 14 Paragraph (1) of Law on Sexual Offences has the potential to hinder the handling of electronic-based sexual violence. It can be seen from the three decisions in handling sextortion cases that at the time of recording, the victim may have agreed, but the victim does not expect the recording to later become a tool of threat to blackmail the victim.<sup>28</sup> Furthermore, the formulation of criminal sanctions in Law on Sexual Offences is more accommodating in this case because it use an alternative-cumulative formulation system. Article 17 of Law on Sexual Offences stipulates that perpetrators can be subject to sanctions in the form of rehabilitation in addition to criminal sanctions.

Law on Sexual Offences, in addition to defining criminal offenses and forms of punishment, also addresses the need for the victim protection during the judicial process. Three decisions in sextortion cases demonstrate that the victims often refrain from reporting perpetrators due to a lack of protection. The victims choose not to report for fear of sexual content being disseminated and re-victimization. The victims needs should be met at every stage of the judicial process: pre-trial (investigation), trial (prosecution and trial), and post-trial.<sup>29</sup> Feeling protected throughout the judicial process, particularly during the pre-trial phase, will foster self-confidence, leading to the belief that reporting the perpetrator was appropriate.<sup>30</sup> This protection must also be consistent throughout the post-trial phase to prevent re-victimization and ensure the victims receive their rights related to restitution, including compensation for losses caused by the perpetrator. More specific or accommodating protection is provided to the victims of electronic-based sexual violence as stipulated in Articles 46 and 47 of Law on Sexual Offences concerning sexual content shared by perpetrator. This regulation authorizes the government and prosecutors, in the public interest, to remove and deactivate any sexual content that has been disseminated. Articles 46 and 47 of Law on Sexual Offences are a response to the victims needs. As evidenced by the three sextortion decisions discussed, the victims reasons for not reporting the perpetrators and following their desires to hand over money, create sexual content, and engage in sexual intercourse are due to their powerlessness and intense fear that the perpetrators will share their sexual content on social media with the intention of exposing their parents and friends.

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28 Ratna Batara Munti, Emma Mukarramah, & Maidina Rahmawati, *Op.Cit*, 88.

29 Lies Sulistiani, *Op.Cit*, 205.

30 Lies Sulistiani, *Op.Cit*, 212.

The victims hesitate to report sextortionists not only because of concerns about the perpetrators spreading their sexual content but also because of a lack of protection. They fear re-victimization during the legal process, especially if they are involved in the sexual content. This naturally leads the victims to choose not to report sextortionists for fear of re-victimization. Article 57 of Law on Sexual Offences is a response to the victims fears of re-victimization, requiring law enforcement institution not to include sexual content in case files, such as indictments. This is certainly an effort to protect and respect the dignity and privacy of electronic-based sexual violence victims. Furthermore, Article 23 of Law on Sexual Offences further protects the victims by stating that restorative justice cannot be implemented in sexual violence cases unless the perpetrator is a child.

Law on Sexual Offences is better for accommodates the victims needs in sextortion cases by regulating, First, the victim's right to treatment is contained in Article 68. Second, the victim's right to protection is contained in Article 69. Third, the victim's right to recovery is contained in Article 70. These the victims rights are comprehensively regulated at every stage of the judicial process: pre-trial, trial, and post-trial. Regulations regarding the victims rights should be fulfilled at every stage to provide the victims with access to the judicial process by creating conducive, safe, and comfortable conditions so that justice, legal certainty, and the best interests of the victims can be realized.<sup>31</sup>

#### **D. Conclusion**

Sextortion is carried out by exploiting the victim's sexual content followed by blackmail and threats so that the victim fulfills the perpetrator's wishes to ask for sexual content, ask for sexual relations, and ask not to end the relationship. Based on the facts from the practice of handling sextortion cases in Indonesia, law enforcement institution use, First, Article 368 Paragraph (1) of the Criminal Code with problems in the element of "blackmail or threats, coercion" refers to the Criminal Code as a crime against property where the perpetrator asks not for money, but asks for the victim's sexual content. Second, Article 27 Paragraph (1) of The Law on Electronic Information and Transactions which only focus on the dissemination of sexual content of the victim, without following up with extortion and threats to the sextortion perpetrator's, also the absence of the victim protection. The victim complied with the perpetrator's wishes to create sexual content and engage in sexual intercourse due to the perpetrator's threats of violence. The victim not brave enough to report because she was deeply concerned about the distribution of the victim sexual content. It is appropriate to use Law on Sexual Offences in handling sextortion cases because it has a formulation that is more accommodating with the existence of 3 (three) forms of electronic-based sexual violence, as well as regulations on aggravating crimes regarding blackmail and threats. More specific or more accommodating protection is provided to the victims of

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31 Lies Sulistiani, *Op.Cit.*, 213.

electronic-based sexual violence in Articles 46, 47, 57, and 68 of Law on Sexual Offences, which makes the victims brave enough to report. The conclusion is Article 14 of Law on Sexual Offences should be used in handling sextortion cases because have a maximum sentence with additional penalties that can be increased by 1/3 (one third) and provide the victim protection for rehabilitation, restitution, and removing and/or blocking access to the victim sexual content.

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