



Dynamics of Regulating Provisions on Criminal Acts of Electronic-Based Sexual Violence

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Abstract

Law Number 12 of 2022 concerning Crimes of Sexual Violence has become an important milestone in law enforcement efforts against sexual crimes, including electronic-based sexual violence. This research will discuss the legis ratio for regulating electronic-based sexual violence crimes and then discuss the harmonization of provisions for electronic-based sexual violence crimes after the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes. The research method used is normative, using a statutory approach, conceptual approach and case approach. The results of the research conclude, firstly, The ratio legis of the provisions on criminal acts of electronic-based sexual violence is based on the 1945 Constitution (UD 1945), which guarantees the protection of the rights of every citizen from all acts of violence. Second, the provisions on criminal acts of electronic-based sexual violence are explicitly regulated in Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS). Previously, legal provisions regarding sexual violence were scattered across various laws and regulations, but there was no specific provision explicitly addressing electronic-based sexual violence. Subsequently, due to the development of legislation, electronic-based sexual violence is now regulated under UU TPKS.

Keywords: electronic-based sexual violence crimes, ratio legis, sexual violence

Introduction

Before the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), Indonesia faced challenges in handling sexual violence cases. The lack of clear and comprehensive regulations in the Criminal Code (Old KUHP/WvS NI) has resulted in many cases of sexual violence not being able to be processed legally. So, perpetrators of sexual violence often escape legal responsibility, and victims do not get proper justice.

This situation raises serious concerns about the protection of human rights, as mandated in the 1945 Constitution of the Republic of Indonesia (UD NRI 1945). Section 28J of the 1945 Constitution of the Republic of Indonesia emphasizes the right of every citizen to receive fair and just protection, including protection from all forms of violence, including sexual violence. Even though there is an affirmation of the right to protection from violence and discrimination, there are types of sexual violence that

are not yet recognized by the Indonesian legal system. The old KUHP only regulated sexual violence in the context of rape, which the formulation was not able to provide protection for women victims of violence (Tridewiyanti, 2014).

Then, when Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence was passed, several forms of criminal acts of sexual violence began to be regulated. The implementation of this law is expected to bring significant changes in the handling of sexual violence cases. It is hoped that this law will provide a strong and clear legal basis for handling cases of sexual violence, including those related to electronic-based sexual violence. Several forms of criminal acts of sexual violence what is meant are contained in Section 4 subsection (1) of UU TPKS, namely: (a) non-physical sexual harassment; (b) physical sexual harassment; (c) forced contraception; (d) forced sterilization; (e) forced marriage; (f) sexual torture; (g) sexual exploitation;

(h) sexual slavery; and (i) electronic-based sexual violence.

In some of the forms above, an interesting thing to discuss and research in contemporary times is the last form, namely Electronic-based Sexual Violence Crimes. Because rapid technological developments have brought new consequences in the field of sexual crimes. This can be seen based on data from the National Commission on Violence Against Women and service institutions that reveal alarm data about violence against women in 2023. Electronic-based sexual violence reached its highest peak with 991 cases, accounting for 35.4% of the total cases. Sexual harassment is in second place with 711 cases. The data also recorded 180 cases of sexual abuse, 143 cases of rape and 72 cases of sexual intercourse. Meanwhile, there were 575 other cases involving sexual violence (Komnas Perempuan, 2024).

Therefore, it would be interesting if this research discussed in detail the issue of the legal ratio for regulating electronic-based sexual violence crimes. Next, we will discuss the issue of dynamics of provisions and enforcement of electronic-based sexual violence crime offenses.

Materials and Method

The research method applied in this research is normative legal research with three main approaches, namely the statutory approach, the conceptual approach and the case approach. The legal materials used are primary and secondary legal materials. The process of collecting legal materials is carried out in stages with the following steps: Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi, Prenada Media, Jakarta, 2017, hlm. 212. (1) Identifying legal facts and eliminating information that is not relevant to determining the legal issue or formulation of the problem to be solved; (2) Collect primary and secondary legal materials that are considered relevant, as well as non-legal materials that have relevance; (3) Conduct a review of the legal issue or formulation of the problem proposed based on the materials that have been collected; (4) Interpreting, systematizing, analyzing and drawing conclusions on legal issues by presenting them in the form of arguments; (5) Presenting a prescription based on the arguments that have been developed in the conclusion.

Results and Discussion

Legis Ratio of Provisions for Electronic-Based Sexual Violence Crimes

Rapid advances in information technology have changed many aspects of daily life significantly. One of the main impacts is internet penetration which provides unlimited access for society, which in turn has positive and negative consequences. One of the negative consequences that arises is the increase in cybercrime or digital crime. This emphasizes the need for changes in legal regulations to protect people active in the digital world and respond to new challenges that arise (Afrida et al., 2023).

Crimes in the digital space (cybercrime) that often occur in society are data falsification, fraud, data theft, provocation, pornography, gambling, copyright piracy, and others. Ibid.. Apart from these crimes, in the scope of cybercrime recently what often occurs is electronic sextortion (sexual blackmail) or Electronic-based Sexual Violence Crimes (abbreviated as TPKS).

Electronic-Based Sexual Violence is a form of sexual harassment committed by criminals which must be enforced in the eyes of the law in order to protect victims. After the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence or commonly known as UU TPKS, the term Electronic-Based Sexual Violence was used which is included in Section 4 subsection 1 point i which is classified as a criminal act of sexual violence (Rumetor et al., 2023).

In UU TPKS, the provisions for electronic-based sexual violence crimes are contained in Section 14 subsection (1) of UU TPKS. Any person without rights:

- a. recording and/or taking images or screenshots that are sexually charged 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 contain sexual content against the recipient's will and are directed towards sexual desires; and/or
- c. carrying out stalking and/or tracking using an electronic system against people who are the objects of electronic information/documents for sexual purposes, convicted of committing electronic-based sexual violence, with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).

Based on the section above, it can be understood that several forms of criminal acts of electronic-

based sexual violence are a series of acts by means of recording and/or taking images or screenshots that have a sexual content against the will or without the consent of the person who is the object of the recording or image or screenshots, in addition to transmitting electronic information and/or electronic documents that contain sexual content against the recipient's will and are directed towards sexual desires; and/or carrying out stalking and/or tracking using an electronic system against people who are the objects of electronic information/documents for sexual purposes.

Then what happens? legis ratio of the existence of these provisions. Constructively and comprehensively it can be understood that Legis Ratio of Provisions for Electronic-Based Sexual Violence Crimes is based on a foundation of thought and principles as follows:

1. In accordance with the 1945 Constitution which has become the basis for Indonesia's existence as a legal state. the 1945 Constitution guarantees the protection of every citizen's rights to be free from violence, discrimination and inhumane treatment, the right to equality before the law and government, the right to equal treatment before the law, including the right to access justice. Badan Legislasi Dewan Perwakilan Rakyat Republik Indonesia, "Naskah Akademik Rancangan Undang-Undang Republik Indonesia Tentang Tindak Pidana Kekerasan Seksual" (Jakarta, 2021). This is the main basis for ensuring the protection of the rights of every citizen from all acts of violence, including electronic-based sexual violence.
2. Along with the development of information technology, it turns out that it also has implications for online-based modes of sexual violence, so it is necessary to regulate the provisions of this Section regarding the Crime of Sexual Violence.

A. Dynamics of Provisions and Enforcement of Electronic-Based Sexual Violence Crime Offenses

It is necessary to first understand the meaning of sexual violence. As written in the Academic Paper on the Draft Law on Sexual Violence. Meaning that Sexual violence is any act of a physical and/or non-physical nature, directed at the body and/or the function of the reproductive organs by force using threats, deception, or persuasion which has or does not have a specific aim to gain profit resulting in

physical suffering or misery, psychological, sexual and economic losses (Badan Legislasi Dewan Perwakilan Rakyat Republik Indonesia, 2021).

In Section 4 subsection (1) of UU TPKS, criminal acts of sexual violence consist of: (a) non-physical sexual harassment; (b) physical sexual harassment; (c) forced contraception; (d) forced sterilization; (e) forced marriage; (f) sexual torture; (g) sexual exploitation; (h) sexual slavery; and (i) electronic-based sexual violence. Apart from that, criminal acts of sexual violence take the form of (a) rape; (b) obscene acts; (c) sexual intercourse with children, obscene acts against children, and/or sexual exploitation of children; (d) acts of violation of decency that are contrary to the victim's will; (e) pornography involving children or pornography that explicitly contains violence and sexual exploitation; (f) forced prostitution; (g) criminal acts of trafficking in persons aimed at sexual exploitation; (h) sexual violence within the domestic sphere; (i) the crime of money laundering, the original crime of which is the Crime of Sexual Violence; and (j) other criminal acts which are expressly declared as Crimes of Sexual Violence as regulated in the provisions of the laws and regulations.

Before the ratification and enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), legal provisions regarding sexual violence were spread across various laws and regulations. However, there are no provisions that explicitly mention electronic-based sexual violence. It's just that several provisions relating to electronic-based sexual violence crimes are not yet sufficient to ensnare perpetrators. The provisions or regulations relating to electronic-based sexual violence crimes before UU TPKS were as Table 1. The legal provisions in the table above have become dynamic in enforcing electronic-based sexual violence laws. Because there was no explicit mention of electronic-based sexual violence crimes, questions often arose about what constitutes electronic-based sexual violence. Additionally, concerns were raised about how to address cases where the victims of electronic-based sexual violence are minors.

Not only are the laws mentioned in Table 1 above silent on this matter, but the National Criminal Code (Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code) also does not regulate the provisions for electronic-based sexual violence crimes.

Table1. Regulations relating to electronic-based sexual violence crimes before UU TPKS
Source: Arifin & Rahman, (2021)

Constitution	Description
KUHP / WvS NI	Prohibited actions: (1) Intentionally and openly violating decency; (2) Anyone who intentionally and in the presence of others present there contravenes decency. Threat of punishment: The penalty threat is imprisonment for 2 years and 8 months, or a fine of Rp. 400,000 (four hundred thousand Indonesian Rupiah) (Article 281 KUHP / WvS NI).
	Prohibited actions: Broadcasting, displaying, or affixing in public any writing, depiction, or object known to contain content that violates decency, or anyone with the intention to prepare, display, or affix it in public, making such writing, depiction, or object, importing it into the country, forwarding it, exporting it from the country, or possessing it, or anyone openly or by distributing unsolicited letters, offering it, or showing it as available. Threat of punishment: The penalty threat is imprisonment for 1 year and 6 months, or a fine of four hundred fifty thousand rupiah (Article 282 (1) KUHP / WvS NI).
	In addition, Article 315 KUHP, Article 368 KUHP, and Article 369 KUHP are also articles within the Indonesian Penal Code related to electronic-based sexual violence.
Law no. 44 of 2008 concerning Pornography	Prohibited actions: Producing, creating, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting or providing pornography (Section 4). Threat of punishment: The threat of a criminal penalty of 6 months to 12 years and/or a fine of Rp. 250 million to 6 billion, (Section 45 subsection 1).

Constitution	Description
Law no. 19 of 2016 concerning ITE	Prohibited actions: Distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents that contain violations of morality (Section 27). Threat of punishment: With a maximum criminal penalty of 6 years and/or a maximum fine of one billion rupiah, (Section 45 subsection 1).

The provisions for electronic-based sexual violence crimes are explicitly regulated in the UU TPKS. Based on Section 14 subsection (1) of UU TPKS, it can be understood that several forms of criminal acts of electronic-based sexual violence are: (a) a series of acts by recording and/or taking pictures or screenshots that contain sexual content against one's 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 contain sexual content against the recipient's will and are directed towards sexual desires; and/or (c) carrying out stalking and/or tracking using an electronic system against the person who is the object of electronic information/documents for sexual purposes.

Looking at this section, it can be interpreted that criminal acts of electronic-based sexual violence according to Section 14 subsection (1) of UU TPKS, are all acts of using electronic means that have a sexual content against the will or without the consent of the person who is the object. So, if the person who is the object agrees or the act is carried out with the consent of the person who is the object, then the action does not fall into the category of electronic-based sexual violence crimes.

What is important to note is what if the victim is a minor? This is done by *sexting* (the activity of sending or receiving intimate photos/videos) or *grooming* (online persuasion with sexual desires).

UU TPKS only states that if electronic-based sexual violence as regulated is a complaint offense, unless the victim is a child or person with a disability. So, if the victim is a child or person with a disability, the victim's will or consent does not eliminate criminal charges.

Meanwhile, acts in the form of *sexting*

(activities of sending or receiving intimate photos/videos) or *grooming* (online seduction of sexual desires) are not yet included in the category of electronic-based sexual violence crimes. This requires further study regarding actions in the form of *sexting* (activities of sending or receiving intimate photos/videos) or *grooming* (online seduction of sexual desires) carried out on minors.

Conclusion

It can be understood constructively and comprehensively *Legis Ratio* of Provisions for Electronic-Based Sexual Violence Crimes is based on the 1945 Constitution which has become the basis for Indonesia's existence as a legal state. The 1945 Constitution has guaranteed the protection of the rights of every citizen free from violence, this is the main basis for guaranteeing the protection of the rights of every citizen from all acts of violence, including electronic-based sexual violence. Apart from that, along with the development of information technology, it turns out that it also has implications for online-based modes of sexual violence, so it is necessary to regulate the provisions of this section regarding the Crime of Sexual Violence. The provisions on criminal acts of electronic-based sexual violence are explicitly regulated in Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS). Previously, legal provisions regarding sexual violence were scattered across various laws and regulations, but there were no specific provisions explicitly addressing electronic-based sexual violence. Only a few provisions related to electronic-based sexual violence existed. Therefore, electronic-based sexual violence is now regulated under the UU TPKS.

Suggestions

Based on the research findings, analysis, and conclusions explained above, there is a need for changes or expansion of the provisions on electronic-based sexual violence crimes. This is necessary due to the emergence of new types of crimes such as *sexting* (the act of sending or receiving intimate photos/videos) and *grooming* (online persuasion with sexual intent).

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