

**THE IMPLEMENTATION OF LAW NUMBER 12 OF 2022 ON SEXUAL  
VIOLENCE CRIME ON ONLINE GENDER-BASED VIOLENCE (OGBV)  
CASES IN THE FORM OF NON-CONSENSUAL DISSEMINATION OF  
INTIMATE IMAGE (NCII) IN YOGYAKARTA**

**THESIS**



Written by:

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Student Number: 19410395

**INTERNATIONAL PROGRAM  
UNDERGRADUATE STUDY PROGRAM IN LAW  
FACULTY OF LAW  
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IN YOGYAKARTA**

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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Demikian surat pernyataan ini saya buat dengan sebenar-benarnya, dalam kondisi sehat jasmani dan rohani, dengan sadar serta tidak ada tekanan dalam bentuk apapun dan oleh siapapun.

Yogyakarta, 25 November 2023



Hanabila Zahra Widyatmaka

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## MOTTO

"Allah does not burden a person except according to their ability."

**-Qur'an Surah Al-Baqarah verse 286-**

"Indeed, after hardship, there is ease."

**-Qur'an Surah Al-Insyirah verse 6-**

"Your Lord has not abandoned you nor hated you."

**-Qur'an Surah Adh-Dhuha verse 3-**

"A woman who does not hold on to her religion  
will go out of her mind because of her feelings."

"Feeling stupid and lost are part of the process. That means that you open yourself for new possibilities. And that's the essence of learning. And remember, in this process, whenever you fail, that means that you learn something. Not losing something."

**-Shofia Ishar-**

"Justice is when the blind can see it, and the deaf can hear it."

**-Artidjo Alkostar-**

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The author realizes that writing has many shortcomings and is far from perfect. Hence, the writer is very open and accepts criticism and suggestions for the progress of the learning process for writers in the future. The author also hopes this thesis can benefit writers and readers. While writing and completing this thesis, the writer also realizes that it is inseparable from the support, guidance, and assistance from various parties so that he can finish his thesis on time. I could not be at this point without the help, support, and prayers from my beloved parents, family, lecturers, and friends. All gratitude shall be honored to:

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## TABLE OF CONTENTS

CURRICULUM VITAE .....	vii
MOTTO.....	viii
FOREWORDS .....	ix
ABSTRACT .....	xvi
CHAPTER I .....	1
INTRODUCTION .....	1
A. Background of Study .....	1
B. Problem Formulation .....	9
C. Research Objectives.....	10
D. Research Originality.....	10
E. Literature Review.....	13
F. Operational Definition .....	21
G. Research Methodology.....	22
H. Structure of Writing.....	26
CHAPTER II.....	28
LITERATURE REVIEW REGARDING ONLINE GENDER-BASED VIOLENCE (OGBV), NON-CONSENSUAL DISSEMINATION OF INTIMATE IMAGE (NCII), AND SEXUAL VIOLENCE CRIME.....	28
1. An Overview of Online Gender-Based Violence (OGBV).....	28
1.1. Definition of Online Gender-Based Violence (OGBV) .....	28
2.2. Types of Sexual Violence Crime.....	40
According to Article 4 paragraph (1) of Law Number 12 of 2022 on Sexual Violence Crime, there are 9 (nine) types of Sexual Violence Crime, there are non-physical sexual harassment, physical sexual abuse, forced contraception, forced sterilization, forced marriage, sexual abuse, sexual exploitation, sexual slavery, and electronic based sexual violence. ....	40
According to Article 4, paragraph (2) Law Number 12 of 2022 on Sexual Violence Crime: 40	
3. Non-Consensual Dissemination of Intimate Image (NCII) .....	40
3.1. Definition of Non-Consensual Dissemination of Intimate Image (NCII).....	40

3.3. The Impact Suffered by Victims of Non-Consensual Dissemination of Intimate Image (NCII) Crime .....	42
3.4. Arrangements Regarding Non-Consensual Dissemination of Intimate Image (NCII) Crime before the Law Number 12 of 2022 concerning Sexual Violence Crime (TPKS Law) came into existence .....	45
3.5. Non-Consensual Dissemination of Intimate Image (NCII) Crime in the term of Law Number 12 of 2022 concerning Sexual Violence Crime .....	49
4.2. Source of Islamic Criminal Law .....	53
4.3. The Aim of Islamic Criminal Law .....	56
4.4. Classification of Islamic Criminal Law .....	61
4.5. Non-Consensual Dissemination of Intimate Images (NCII) from the Perspective of Islamic Law .....	65
CHAPTER III .....	76
FINDINGS AND RESULTS .....	76
A. The Appropriateness to Settle Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) to use Law Number 11 of 2008 concerning Information and Electronic Transactions, and Law Number 44 of 2008 concerning Pornography at Yogyakarta Special Region .....	76
CHAPTER IV .....	128
FINAL .....	128
A. Conclusions .....	128
B. Suggestions .....	129
BIBLIOGRAPHY .....	130





## ABSTRACT

Online Gender-Based Violence (OGBV) cases, particularly Non-Consensual Dissemination of Intimate Images (NCII), are a crucial problem in the Special Region of Yogyakarta. Many cases remain unresolved for various reasons. The main reason is that victims often avoid reporting their cases to the police due to the fear of potential criminalization by the regulations. The limited protection for the victims is due to the Special Region Police of Yogyakarta still using laws such as the ITE and Pornography Law.

This research empirically examines the appropriateness of resolving OGBV cases in the form of NCII using ITE and Pornography Law. Furthermore, the urgency of the Crime of Sexual Violence Law in resolving NCII cases. Case data was obtained from the Special Region of Yogyakarta Police, and research interviews were conducted with victims and the investigator.

This study reveals that the resolution of OGBV cases, in the form of NCII, using the ITE and Pornography Laws, is ineffective. The researcher found 52 (fifty-two) victims who were reluctant to report their cases to the Police because they were afraid of being criminalized by ITE and Pornography Laws. Furthermore, the Law on Sexual Violence is expected to bring significant changes, especially in reducing or eliminating certain cases, especially NCII in Indonesia. This law provides more comprehensive protection for victims than the ITE and Pornography Laws, making it urgent to resolve OGBV cases in the form of NCII.

The research suggests the ITE and Pornography Law should not be used to resolve cases of OGBV in the form of NCII, as they are considered inappropriate. Additionally, law enforcement officials should have the qualifications to handle cases of sexual violence, ensuring victims to feel safe in resolving cases. Furthermore, in order to properly implement the Law on Sexual Violence, the government should immediately enforce the implementing guidelines and technical guidelines of the institution, especially those related to procedural law. Furthermore, the Law on Sexual Violence must also be immediately socialized to related parties in order to create a comprehensive understanding of the substance of the Law on Sexual Violence.

**Key Words:** Online Gender-Based Violence (OGBV), Non-Consensual Dissemination of Intimate Images (NCII), Information and Electronic Transaction Law, Pornography Law, and Crime of Sexual Violence Law.

# CHAPTER I

## INTRODUCTION

### A. Background of Study

The spread of the internet network and the ease of accessing the internet have brought new criminal acts of violence known as Online Gender-Based Violence. Online Gender Based Violence (OGBV) is one of the new modifications of violence in cyberspace. This violence is committed against the body, sexuality, and gender identity of someone who uses digital technology as the facility.<sup>1</sup> According to the *Association for Progressive Communication* (APC), Online Gender-Based Violence is gender-based violence that is perpetrated, supported, or aggravated, in part or whole, by using information and communication technologies (ICT), such as mobile phones, the internet, social media platforms, and e-mail.<sup>2</sup>

The number of Online Gender-Based Violence (OGBV) cases against women, especially in Indonesia, significantly increase. In 2019, the Legal Assistant Institute for the Indonesian Women's Association for Justice (LBH APIK) received 17 Online Gender-Based Violence (OGBV) cases. In 2020, there was an 18-fold increase in reports compared to 2019. In the first year of

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<sup>1</sup> Sugiyanto, Okamaisy, *Journal of Women and Families*, No. 1.Vol. 2, Year 2021, page 1.

<sup>2</sup> M. Rahmawati and N. Saputri, "Far from the Fire; Looking at the Legal Framework for Gender-Based Violence Online in Indonesia", *SAFEnet*", Year 2022, page 19.

the COVID-19 pandemic, 307 cases were reported in the Online Gender-Based Violence (OGBV) category. Then, this number increased in 2021, bringing the total to 489 cases.<sup>3</sup>

Online Gender-Based Violence has many forms, one form of Online Gender Based Violence (OGBV), currently becomes a global phenomenon, is the Non-Consensual Dissemination of Intimate Images (NCII).

In the beginning, Non-Consensual Dissemination of Intimate Images (NCII) was often called "*revenge pornography*". The word "*revenge pornography*" is no longer used because it implies retribution from the victim and can create the potential for victim blaming.<sup>4</sup> In addition, the term *revenge porn* means that the perpetrator spreads the victim's intimate content based on revenge and as if it was done because the victim made a mistake, it can be concluded that *revenge porn* is a term that blames the victim and fails to take sides with the victim.

The concept of Non-Consensual Dissemination of Intimate Images (NCII) was developed in England by teachers namely Claire McGlynn and Erika Rackley. They describe Non-Consensual Dissemination of Intimate Images (NCII) as a private photo or video created and/or shared without the

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<sup>3</sup> Syaharani, Mela, GoodStats, *Number of Cases of Gender-Based Violence Online Decreasing in 2022, What's the Total?*, 2023, <https://goodstats.id/article/jumlah-kasus-kekerasan-berbasis-gender-online-tahun-2022-menurun-berapa-totalnya-3EFTc>, Accessed on Monday, 24<sup>th</sup> July 2023, at 3.10 WIB.

<sup>4</sup> Hany Areta A., Hardiana Clarisa, and Siti Chatlia Q., "*Escalation of Online Gender-Based Violence During the Pandemic: Study of Handling Pornography Cases*", *Lex Renaissance Journal*, No. 4.Vol. 6, Year 2021, page 2.

consent of the person in the photo or video, and threats to make and/or share the image.<sup>5</sup> Meanwhile, Citron & Franks emphasize the notion of Non-Consensual Dissemination of Intimate Images (NCII), as distributing sexually graphic images of individuals without their consent.<sup>6</sup>

In general, these threats can occur under two situations. The first is where the content is distributed by someone who knows the victim and obtained from the victim on a consensual basis. The second is a situation where the image is taken by someone else without the victim's consent. In short, Non-Consensual Dissemination of Intimate Images (NCII) occurs when the perpetrators use intimate or sexual content (images or videos belong to the victim) to threaten and intimidate the victim into doing what they want.

There was a case that happened to a girl named Bunga (pseudonym). Bunga had known her ex-boyfriend since she was in junior high school and developed a very close relationship with him when she was in college. They then had sexual intercourse, then recorded and took pictures of that intimacy. At first, the relationship between them was delicate. However, over time the relationship between them became increasingly toxic. Bunga's ex-boyfriend forbade Bunga to make friends and to participate in campus activities. Besides that, Bunga also experienced physical violence from her ex-boyfriend.

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<sup>5</sup> Suzie Dunn, *“Technology-Facilitated Gender-Based Violence An Overview”*, Penerbit Centre for International Governance Innovation, Canada, Year 2020, page 8.

<sup>6</sup> Citron, D. K., & Franks, M. A. (2014). Criminalizing Revenge Porn. *Wake Forest Law Review*, vol. 49, p. 346.

Every time Bunga wanted to end the relationship, Bunga's ex-boyfriend threatened to spread their intimate videos and photos.<sup>7</sup> This case is an example of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Image (NCII).

According to SAFEnet (Southeast Asia Freedom of Expression Network), there were forms of online gender-based violence reported throughout 2021, including the spread of Non-Consensual Intimate Image (NCII), threats, doxing, cyber flashing, flaming, impersonation, morphing, outing, invasion of privacy, sexual harassment, damage to reputation, phishing, surveillance, and complaints about the use of the Information and Electronic Transactions Act.<sup>8</sup> The number of complaints for Non-Consensual Dissemination of Intimate Images (NCII) reached 508 complaints (75%), then 150 other complaints in other forms, and 19 unidentified complaints.<sup>9</sup> Based on the data presented, it can be said that Indonesia has a reasonably high percentage, reflecting a large number of reported cases of NCII (Non-Consensual Intimate Image).

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<sup>7</sup> Online violence: Victims of revenge porn are cursed, strangled, and spread intimate content - 'I have tried to kill myself many times', BBC NEWS INDONESIA, <https://www.bbc.com/indonesia/indonesia-56629820>. Accessed on Tuesday, 21 March 2023, at 13.21 WIB.

<sup>8</sup> AWAS KBGO, *Half-hearted Legal Protection for Victims of Electronic-Based Sexual Violence in the TPKS Law*, found in <https://awaskbgo.id/2022/04/18/setengah-hati-perlindungan-hukum-korban-kekerasan-seksual-berbasis-elektronik-dalam-uu-tpks/>. Accessed on Tuesday, 15<sup>th</sup> August 2021, at 17.38 Indonesia Western Time.

<sup>9</sup> Dkk., Sanjaya, A. Ryan, "2021 Indonesia Digital Rights Situation Report; The Pandemic is Under Control, but Digital Repression Continues", Southeast Asia Freedom of Expression Network (SAFEnet)," 2021. <https://awaskbgo.id>.

As we know that, The Government of the Republic of Indonesia and the Indonesian People's Representative Council (DPR RI) passed Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law), on May 9, 2022. Online Gender-Based Violence, especially Non-Consensual Dissemination of Intimate Images (NCII), have been regulated in Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law). The TPKS Law becomes the umbrella law that explicitly regulates criminal acts of sexual violence in Indonesia. The TPKS Law also regulates several contents such as types of sexual violence, protection and rights of victims, restitution for victims, to more comprehensive and in-depth arrangements for Online Gender Based Violence (OGBV) including Non-Consensual Dissemination of Intimate Images (NCII) case. In that case, we can see that the TPKS Law has the potential to accommodate problems regarding Non-Consensual Dissemination of Intimate Images (NCII) cases ranging from prevention, handling, and law enforcement to victim recovery.<sup>10</sup>

As we can see, the regulation regarding Non-Consensual Dissemination of Intimate Images (NCII) is well-regulated and comprehensive, using Law Number 12 of 2022 concerning Sexual Violence Crime.

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<sup>10</sup> Azza Fitrahul, and Muhammad Rifqi Hariri, "Legal Protection for Victims of Revenge Porn as a Form of Gender-Based Online Violence Judging from Law Number 12 of 2022 concerning Crimes of Sexual Violence", *Rewang Rancang: Journal of Lex Generalis Law*. Vol.3. No.7(July 2022) <https://jhlgr.wangrencang.com/>

The Indonesian National Police Chief (Kapolri) has sent a telegram with the number ST/1292/VI/RES.1.24/2022, to all Regional Police Chiefs (Kapolda) in Indonesia, to enforce Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law).<sup>11</sup> However, many law enforcement officials, especially the investigator in Yogyakarta Special Region Police refuse to use Law Number 12 of 2022 concerning Sexual Violence Crime (TPKS Law) to resolve Online Gender-Based Violence (OGBV) cases in the form of Non-Consensual Dissemination of Intimate Image (NCII). They prefer using Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 on Electronic Information and Transactions, and Law Number 44 of 2008 concerning Pornography<sup>12</sup>.

Researchers found more than fifty victims of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) in the Yogyakarta Special Region, who chose not to report the violence they experienced to the police, this number is too far compared to the number of victims who reported violence to the police.

There is data obtained on complaints regarding pornography and immoral cases from 2021 to 2023 (data up to May 2023) from the Yogyakarta

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<sup>11</sup> Munti, Ratna Batara, “*The Voice: A Number of Police Refuse to Use the TPKS Law, a Serious Challenge in Handling Victims*,” contained in <https://www.konde.co/2023/01/the-voice-sejumlah-polisi-tolak-gunakan-uu-tpks-tantangan-berat-penanganan-korban-kekerasan-seksual.html/>, accessed on Tuesday, 25<sup>th</sup> July 2023, at 3.02 WIB.

<sup>12</sup> Interview with Mr. Andrias Irawan Saputro, S.H., as an Investigator from the Special Crime Division of the Special Region of Yogyakarta Police, at the Special Region of Yogyakarta Police, on Thursday, May 25, 2023.

Special Region Police (POLDA DIY).<sup>13</sup>

**Tabel 1.1**

**Table of Data Complaint Regarding Pornography and Immoral Cases  
in 2021 – 2023 from Special Region of Yogyakarta Police**

No.	Year	Complaint
1.	2021	25
2.	2022	28
3.	2023	15

Source: Directorate of Special Criminal Investigation (Ditreskrimsus) of the Special Region of Yogyakarta Police (POLDA DIY).

Based on research data obtained by the researcher, with 52 (fifty-two) respondents. All of them are victims of Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Images (NCII).

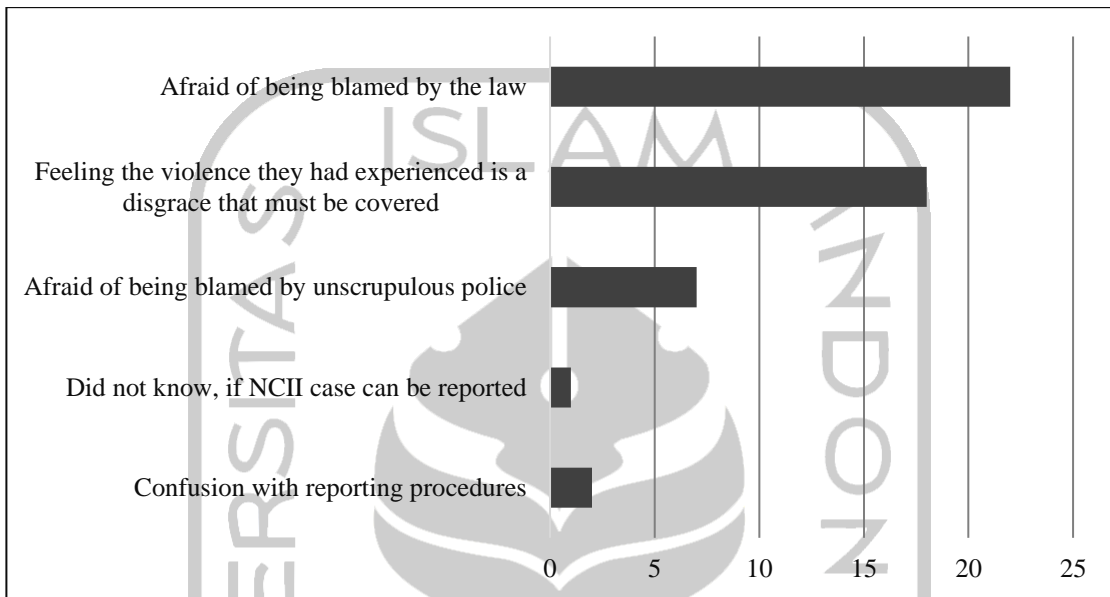
Researchers found several reasons why Victims are reluctant to report their cases to the Police.

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<sup>13</sup> Researcher's data from Directorate of Special Criminal Investigation (Ditreskrimsus) of the Special Region of Yogyakarta Police (POLDA DIY).



**Diagram 1.1**  
**Reasons Why Victims of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) Reluctant to Report Their Case to Police**



Source: Research data obtained by the author

As we can see, based on the data obtained by the researcher, one of the main reasons that Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Images (NCII) is reluctant to report their case to the Police is the fear of survivors, that is, fear of being criminalized by Law Number 19 of 2016 concerning the Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, and The Law Number 44 of 2008 concerning Pornography. In conclusion, many victims are reluctant to report victims to the police because they are afraid of

being blamed by the law that has not taken sides on the victim.<sup>14</sup>

Based on this background, it can be concluded that, in reality, there are many victims of sexual violence cases of Non-Consensual Dissemination of Intimate Images (NCII) who choose not to report their cases to the Police because they are afraid of being criminalized by the law that used by the Police to solve Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Image (NCII). So the authors are interested in examining more deeply **"THE IMPLEMENTATION OF LAW NUMBER 12 OF 2022 ON SEXUAL VIOLENCE CRIME ON ONLINE GENDER-BASED VIOLENCE (OGBV) CASES IN THE FORM OF NON-CONSENSUAL DISSEMINATION OF INTIMATE IMAGES (NCII) IN YOGYAKARTA."**

## **B. Problem Formulation**

1. Is it appropriate to resolve Online Gender-Based Violence (OGBV) cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) using Law Number 11 of 2008 concerning Information and Electronic Transactions, and Law Number 44 of 2008 concerning Pornography at Yogyakarta Special Region Police?

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<sup>14</sup> Research data obtained by the researcher

2. How is the urgency of Law Number 12 of 2022 concerning Sexual Violence Crime in resolving the Online Gender-Based Violence (OGBV) case in the form of Non-Consensual Dissemination of Intimate Image (NCII)?

### **C. Research Objectives**

1. To find out if it is appropriate to settle Online Gender-Based Violence (OGBV) cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) using Law Number 11 of 2008 concerning Information and Electronic Transactions, and The Law Number 44 of 2008 concerning Pornography at The Special Region Police at Yogyakarta Special Region Police.
2. To find out the urgency of Law Number 12 of 2022 concerning Sexual Violence Crime in resolving the Online Gender-Based Violence (OGBV) case in the form of Non-Consensual Dissemination of Intimate Image (NCII).

### **D. Research Originality**

Before compiling a thesis, it is very important for researchers to conduct a literature study. This is done to ensure the originality of the research entitled “The Implementation of Law Number 12 of 2022 on Sexual Violence Crime on Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta”. Related research that has similarities with this research are as follows:

1. Thesis is written by Tiara Robiatul Adawiyah, entitled “*Perlindungan*

*Hukum Bagi Korban Pornografi Balas Dendam (Revenge Porn)*". The similarity is both Tiara Robiyatul Adawiyah's thesis and the researcher's thesis discuss about Revenge Porn or Non-Consensual Dissemination of Intimate Images (NCII). And the difference is that thesis written by Tiara Robiyatul Adawiyah used normative legal research, meanwhile researchers use empirical legal research, also The thesis written by Tiara discusses the urgency of legal protection for victims of revenge porn. Meanwhile, the researcher's thesis discusses The Implementation of Law Number 12 of 2022 on Sexual Violence Crime on Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta.

2. Journal *Rawang Rencang: Jurnal Hukum Lex Generalis*, Vol. 3, No. 7 (Juli 2022), written by Azza Fitrahul Faizah, and Muhammad Rifqi Hariri, entitled "Legal Protection of Revenge Porn Victims as an Online Gender-Based Violence According to Law Number 12 of 2022 on Sexual Violence Crime". The similarity is both Azza Fitrahul Faizah, and Muhammad Rifqi Hariri's journal and the researcher's thesis discuss Revenge Porn in the terms of Law Number 12 of 2022 on Sexual Violence Crime. The difference is the journal written by Azza Fitrahul Faizah, and Muhammad Rifqi Hariri's discuss about regulation and legal protection for the criminal act of Revenge Porn prior to the existence of Law Number 12 of 2022 on Sexual Violence Crime, and the impact of the existing regulations in the

Law Number 12 of 2022 on Sexual Violence Crime on protection and legal settlement of Revenge cases. Meanwhile, the researcher's thesis discusses The Implementation of Law Number 12 of 2022 on Sexual Violence Crime on Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta.

3. Journal written by Okamasya Sugiyanto, entitled "*Perempuan dan Revenge Porn: Konstruksi Sosial Terhadap Perempuan Indonesia dari Prespektif Viktimologi*". The similarity is both Okamasya Sugiyanto's journal and the researcher's thesis discuss Revenge Porn. The difference is the Journal written by Okamasya Sugiyanto, discusses the role of women as victims in the occurrence of Revenge Porn, the reasons why victims are vulnerable to being criminalized, and efforts to protect victims. Okamasya Sugiyanto's journal reviewed Revenge Porn in the term of Law Number 11 of 2008 on Information and Electronic Transactions and The Law Number 44 of 2008 concerning Pornography, as we know that Okamasya's Sugiyanto journal was written in July 2021, in which at that time Law Number 12 of 2022 on Sexual Violence Crime has not enforced yet. Meanwhile, the researcher's thesis discusses The Implementation of Law Number 12 of 2022 on Sexual Violence Crime on Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta.

## E. Literature Review

### 1. Online Gender-Based Violence (OGBV)

Sexual harassment on social media also takes various forms, such as cyberstalking, cyber harassment, and sexting to spreading intimate photos/videos, Non-Consensual Dissemination of Intimate Image (NCII), or what used to be often referred to as "revenge porn." Harassment within social media's scope is often referred to as Online Gender-Based Violence (OGBV).

The Association of Progressive Communication (APC) defines Online Gender Based Violence (OGBV) as a form of gender-based violence carried out and exacerbated in part or in whole by information and communication technology such as mobile phones, the internet, social media platforms, and e-mail.<sup>15</sup>

It is excerpted from the Guide by SAFEnet (Southeast Asia Freedom of Expression Network). Technology-facilitated Online Gender-Based Violence (OGBV) is the same as acts of gender-based violence in the real world. The perpetrator of the violence had the intention or intent to harass the victim based on gender or sexuality.<sup>16</sup>

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<sup>15</sup> M. Rahmawati and N. Saputri, "Far from the Fire; Looking at the Legal Framework for Gender-Based Violence Online in Indonesia, SAFEnet", Year 2022, p. 19.

<sup>16</sup> SAFEnet Ellen Kusuma and Nenden Sekar Arum, "Understanding and Responding to Online GenderBased Violence (A Guide)", <https://awaskbgo.id/wp-content/uploads/2020/11/panduan-kbgo-v3.pdf>, 2020.

According to Okamaisya Sugiyanto, Online Gender Based Violence (OGBV) is one of the new modifications of violence in cyberspace. This violence is one of the violence committed against the body, sexuality, and gender identity of someone who uses digital technology as a facility.<sup>17</sup>

Online Gender-Based Violence (OGBV) is the same as acts of gender-based violence in the real world. The perpetrator of the violence had the intention or intent to harass the victim based on gender or sexuality. The most frequent victims of online gender-based violence are women.

According to Veryanto Sitohang, as Komnas Perempuan commissioner explained nine forms of online sexual violence including:<sup>18</sup>

1) Cyber Hacking

Cyber hacking is a form of action or business that uses the internet to access data illegally, secretly, or without the data owner's permission. The data is obtained for use or modification. In the context of Online Gender Based Violence (OGBV), hacking or hacking is an attempt made so that the perpetrator can access the victim's data, such as photos, videos, or other valuable documents.

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<sup>17</sup> Sugiyanto, Okamaisya, "Women and Revenge Porn: Social Construction of Indonesian Women from a Victimological Perspective", *Journal of Women and Families*, No. 1. Vol. 2, Year 2021, page 1.

<sup>18</sup> Puti Malya, 9 Types of Violence against Women on the Internet, One of which is Sexting, found in <https://www.parapuan.co/read/532930269/9-jenis-kekerasan-pada-perempuan-di-internet-salah-satunya-sexting?page=all>, accessed on Wednesday, July 26<sup>th</sup> 2023, at 22.32 WIB.

Perpetrators can also take over someone's social media account without permission.

## 2) Impersonation

Impersonation is an activity using technology to assume the victim's or someone else's identity to access private information, embarrass or shame the victim, contact the victim, or create fraudulent identity documents.

## 3) Cyber Surveillance

Cyber Surveillance has another name, such as; Stalking and Tracking. Cyber Surveillance uses technology to stalk and monitor a victim's activities and behaviours in real-time or historically. Stalking involves repeated incidents, which may be harmless. However, the combined acts can undermine the victim's sense of security and cause distress, fear or intimidation.

## 4) Cyber harassment

Cyber harassment is using the internet to threaten, intimidate, or shame an individual. The methods include threats, stalking, insults, and spreading private information to others. Sexual harassment in online settings can be categorized as cyber harassment.

## 5) Cyber Recruitment

Cyber recruitment uses technology to manipulate victims so they are lured into adverse and dangerous situations. Usually, victims are



contacted online and lured with job opportunities. The perpetrators use this mode to gather victims' data and spread their videos/photos in online forums.

#### 6) Malicious Distribution

The use of technology to spread content that can damage the victim's reputation regardless of the truth. Much like the NonConsensual Dissemination of Intimate Images (NCII). The perpetrator usually threatens to share the victim's photos or videos. The difference is that the shared content is not limited to intimate content.

#### 7) Non-Consensual Dissemination of Intimate Image (NCII)

Non-Consensual Dissemination of Intimate Images (NCII) or better known by its problematic term "revenge pornography", is the act of distributing images or videos online without the consent of one or more people involved in the images or videos.

#### 8) Sexting

In his book entitled "Sexting Gender and Teens", Judith Davidson explains that sexting is the activity of sending sexually explicit messages or images or highlighting sexual material through technological products connected to the internet (in this case, smartphones).

## 9) Morphing

They create synthetic/fake/artificial sexual images to place someone's face over a sexually imaged body.

## 2. Non-Consensual Dissemination of Intimate Image (NCII)

The spread of Non-Consensual Intimate Content or Non-Consensual Dissemination of Intimate Images (NCII) is a form of OGBV (Gender Based Violence Online), which is becoming a global phenomenon today.

In the beginning, Non-Consensual Dissemination of Intimate Images (NCII) was often called "revenge pornography". The word "revenge pornography" is no longer used because it implies retribution from the victim and can create the potential for victim blaming.<sup>19</sup> In addition, because the term revenge porn means that the perpetrator spreads the victim's intimate content based on revenge and as if it was done because the victim made a mistake, it can be concluded that revenge porn is a term that blames the victim and fails to take sides with the victim.

The National Commission on Violence Against Women says that revenge porn is the distribution of content that damages reputation digitally with a motive for revenge.

NCII (Non-Consensual Dissemination of Intimate Image) itself is a term that refers to the dissemination of contents (photos or videos) that are

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<sup>19</sup> Hany Areta A., Hardiana Clarisa, and Siti Chatlia Q., Loc. Cit. p. 2.

made, taken, or distributed without consent by one of the parties involved; images that have been stolen via hacked digital device or other source belonging to the victim; and even images that have been faked by superimposing the victim's face or their identity onto an existing intimate or pornographic image (deep fake system/effect).<sup>20</sup>

The concept of Non-Consensual Dissemination of Intimate Images (NCII) was developed in England by teachers Claire McGlynn and Erika Rackley. Both describe Non-Consensual Dissemination of Intimate Images (NCII) as a private photo or video created and/or shared without the consent of the person in the photo or video, as well as threats to make and/or share the image.<sup>21</sup> In general, these threats can occur due to two situations, namely situations where the content is distributed by someone who knows the victim and at that time obtained from the victim on a consensual basis or a situation where the image is taken by someone else without the victim's permission. In short, Non-Consensual Dissemination of Intimate Images (NCII) occurs when the perpetrator uses intimate or sexual content (images or videos belonging to the victim) to threaten and intimidate the victim into doing what he wants.

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<sup>20</sup> Sepec, Miha. "Revenge Pornography or Non-Consensual Dissemination of Sexually Explicit Material as a Sexual Offence or as a Privacy Violation Offence." *International Journal of Cyber Criminology* (Diamond Open Access Journal).

<sup>21</sup> Suzie Dunn, *Loc. Cit.*, p.8.

Based on the Fact Sheet Publication uploaded by Cakra Wikara Indonesia (CWI) there are 3 (three) forms of Non-Consensual Dissemination of Intimate Image (NCII):<sup>22</sup>

- a. Photos or videos are taken clandestinely without the consent and knowledge of the victim;
- b. Victims take photos or videos of themselves and send them to others privately, but do not consent to their distribution;
- c. Others edit the victim's photos or videos and turn them into intimate content such as deepfakes.

### 3. Sexual Violence Crime

According to Simos, a crime is a human act that is against the law. Which actions are carried out by someone who is accountable, can be hinted at by the perpetrator or the perpetrator.<sup>23</sup> Meanwhile, Moeljatno uses the term criminal act which is defined as an act that is prohibited by law, where the prohibition is accompanied by threats of sanctions which can be in the form of certain crimes, for anyone who carries out the prohibition. Then, according to Andi Hamzah uses the term offense which is defined as an act or action prohibited and threatened with law by law.<sup>24</sup>

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<sup>22</sup> Cakra Wikara Indonesia, Publication, Fact Sheet "Non-Consensual Dissemination of Intimate Image (NCII)", February 2022.

<sup>23</sup> C.S.T. Kansil, 2001, Criminal Law Examination Training, Jakarta: Sinar Graphic, p.106.

<sup>24</sup> C.S.T. Kansil and Christine S.T. Kansil, 2004, Fundamentals of Criminal Law, Jakarta: Pradnya Paramita, p. 54.

The term violence, in the Indonesian Dictionary (KBBI), has the meaning of something that has a violent nature or the existence of coercion in an act of a person or group of people that causes physical damage or an object.<sup>25</sup> Literally, violence is a form of action that is more physical in nature, which can cause injury, disability, illness, or suffering to other people, where there is an element of coercion or unwillingness or lack of approval from other people.<sup>26</sup> Violence is an action that leads to behavior that initially must be contrary to the law, either only in the form of threats or in the form of real actions and causes damage to property, physical or can result in death of someone.<sup>27</sup> Yesmil Anwar defines violence as an act that uses physical strength and power, threats or actions against oneself, an individual, a group of people or society which results in bruising or trauma, death, psychological harm, developmental disorders and deprivation of rights.<sup>28</sup>

Violence can be in the form of physical violence and sexual violence. Sexual violence can be interpreted as an act or act that intimidates someone related to intimacy or sexual relations carried out by an actor by force. Because of these actions, the victim suffered physically and

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<sup>25</sup> Indonesia Dictionary.

<sup>26</sup> Abdul Wahid and Muhammad Irfan. 2001, Protection of Victims of Sexual Violence: Advocacy for Women's Human Rights. Bandung: Refika Aditama. p. 54

<sup>27</sup> Romli Atmasasmitha, Theory & Capita Selektu Criminology, PT. Eresco, Bandung, 1992, p. 55.

<sup>28</sup> Yesmil Anwar, Reaping Crime: A Sociocultural Approach to Criminology, Law and Human Rights, UNPAD Press, Bandung, 2004, p. 54.

psychologically. Sexual violence is a sexual crime which in general is an act that violates decency and damages decency and the act is not of the will of the victim through threats of violence.

Sexual violence tends to have a traumatic impact on victims. However, cases of sexual violence often go unresolved due to denial of the incidents of sexual violence that occurred. Victims of sexual violence tend not to trust other people, so they keep the incidents of sexual violence secret. In addition, victims are afraid to report perpetrators because they feel threatened that they will experience worse things if they report, and feel ashamed because the events they are experiencing can damage their family name.<sup>29</sup>

#### **F. Operational Definition**

The purpose of the definition of terms is to avoid misunderstanding and explain the term in the research title. The title of the author's research is “The Implementation of Law Number 12 of 2022 on Sexual Violence Crime on Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta” There are definition of terms that needs to be explained namely:

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<sup>29</sup> Ivo Noviana, 2015, Sexual Violence Against Children: Its Impact and Handling, Journal of Sosio Informa, Vol. 01, No. 1, p. 18.

## **1. Online Gender-Based Violence (OGBV)**

The Association of Progressive Communication (APC) defines Online Gender-Based Violence (OGBV) as a form of gender-based violence carried out and exacerbated in part or whole by information and communication technology such as mobile phones, the internet, social media platforms, and e-mail.<sup>30</sup>

## **2. Non-Consensual Dissemination of Intimate Image (NCII)**

Claire McGlynn and Erika Rackley, both describe Non-Consensual Dissemination of Intimate Images (NCII) as a private photo or video created and/or shared without the consent of the person in the photo or video, as well as threats to make and/or share the image.<sup>31</sup>

## **G. Research Methodology**

Research method or methodology is a way to find the problem and determine the research title. The research method used in this study is as follows:

### **1. The Typology of Research**

The typology of research conducted by the author in this study is Normative Legal Research - Empirical Law (combined). This research is a legal research that examines the implementation or implementation of

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<sup>30</sup> M. Rahmawati and N. Saputri, "Far from the Fire; Looking at the Legal Framework for Gender-Based Violence Online in Indonesia, SAFEnet", Year 2022, p. 19.

<sup>31</sup> Suzie Dunn, Loc. Cit., p.8.

positive legal provisions (legislation) factually in each specific legal event that occurs in society.

## **2. Research Approach**

### **a. Approach Method**

The author used a statutory approach, which is an approach that is carried out by examining all laws and regulations that are related to the legal issues being handled. In addition, the authors also use empirical data such as interviews.

### **b. Object of Research**

Researchers made the appropriateness of using Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) and Law Number 44 of 2008 concerning Pornography in resolving cases of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Image (NCII) at Yogyakarta Special Region Police. Furthermore, the urgency of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence in resolving cases of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Image (NCII) as the object of this research.

### **c. The Subject of This Research are:**

- 1) Victims of Non-Consensual Dissemination of Intimate Images (NCII) Crime;
- 2) Director of the Directorate of Special Criminal Investigation of the



Special Region of Yogyakarta Police;

### 3. Type of Data

#### a. Primary Legal Material

##### 1) Based on Field Data Obtained by the Author

###### a) Interview

Interview data collection was carried out by asking direct questions to the victims of Non-Consensual Dissemination of Intimate Images (NCII) in the Special Region of Yogyakarta areas, and the Directorate of Special Criminal Investigation of the Special Region of Yogyakarta Police.

###### b) Filling out the Google Questionnaire

Researchers also distributed google questionnaires to the people of the Special Region of Yogyakarta, and female students studying at universities in the Special Region of Yogyakarta.

##### 2) Based on The Indonesia Regulations

a) The 1945 Constitution;

b) The Criminal Code;

c) Law Number 8 of 1981 concerning the Criminal Procedure Code;

d) Law Number 12 of 2022 concerning Crimes of Sexual Violence;

- e) Law Number 44 of 2008 concerning Pornography;
- f) Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions.

#### **b. Secondary Legal Material**

Secondary legal material is a legal material that is explanatory to primary legal material in the form of explanations and theories from books, journals, or literature related to topics, titles, or issues raised in the research.

#### **4. Method of Data Collection**

The collection method is through literature study and observation. The literature study is done by collecting, reading, and regulating journals and analyzing expert opinion. The author also interviewed several victims of Non-Consensual Dissemination of Intimate Image (NCII), and investigators from the Special Criminal Investigation Directorate (Ditreskrimsus) Division.

#### **5. Method of Data Analysis**

This study is a qualitative-descriptive analysis method which meant that a research and understanding process based on the methodology that investigated social phenomena. The data was obtained from written

materials such as legislation and books related to this topic and interview.

## **H. Structure of Writing**

To facilitate the discussion in writing this thesis, it can be described in outline with the following framework:

### **CHAPTER I INTRODUCTION**

This introductory section contains a brief overview of this thesis which consists of background, problem formulation, research objectives of the thesis entitled “The Implementation of Law Number 12 of 2022 on Sexual Violence Crime on Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta”, research originality, literature review, research methods, and structure of writing.

### **CHAPTER II LITERATURE REVIEW**

This section contains an overview that discusses the basic theory regarding the issues raised concerning The Implementation of Law Number 12 of 2022 on Sexual Violence Crime on Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta.

### **CHAPTER III FINDING AND RESULT**

This section presents the results of the research and discussion of:

1. The appropriateness to settle Online Gender-Based Violence (OGBV) cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) using Law Number 11 of 2008 concerning Information and Electronic Transactions and The Law Number 44 of 2008 concerning Pornography at Yogyakarta Special Region Police.
2. The urgency of Implementing Law Number 12 of 2022 concerning Sexual Violence Crime in resolving the Online Gender-Based Violence (OGBV) case in the form of Non-Consensual Dissemination of Intimate Image (NCII).

#### **CHAPTER IV FINAL**

This section is the last chapter which contains conclusions and related research suggestions concerning The Implementation of Law Number 12 of 2022 on Sexual Violence Crime on Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta.



## **CHAPTER II**

### **LITERATURE REVIEW REGARDING ONLINE GENDER-BASED VIOLENCE (OGBV), NON-CONSENSUAL DISSEMINATION OF INTIMATE IMAGE (NCII), AND SEXUAL VIOLENCE CRIME**

#### **1. An Overview of Online Gender-Based Violence (OGBV)**

##### **1.1. Definition of Online Gender-Based Violence (OGBV)**

Sexual harassment through social networking sites encompasses a range of manifestations, including cyberstalking, cyber harassment, sexting, the dissemination of intimate images or films without consent, and the previously prevalent practice known as "revenge porn." The phenomenon of harassment occurring within the realm of social media is commonly known as Online Gender-Based Violence (OGBV). Online Gender-Based Violence (OGBV) refers to an expression of violence that transpires via digital platforms and media. Online Gender-Based Violence (OGBV) refers to the perpetration of acts of violence targeting individuals based on their gender, which have been exacerbated by the proliferation of information and communication technology (ICT) platforms, including smartphones, computers, and similar devices.

The above text is derived from the Guide authored by SAFEnet (Southeast Asia Freedom of Expression Network). Technology-facilitated Online Gender-Based Violence (OGBV) can be considered equivalent to instances of gender-based violence that occur in offline environments. The individual responsible for the act of violence had a deliberate purpose to engage in harassment towards the victim, motivated by factors related to their gender or sexual orientation.<sup>32</sup> Women are the most common victims of online gender-based abuse, as they experience it more frequently than any other group. Online Gender-Based Violence (OGBV) refers to a form of sexual harassment that specifically targets one gender, particularly women, via the internet. Online Gender-Based Violence (OGBV) refers to a range of behaviors that engender feelings of insecurity or unsafety in individuals, targeting their gender or sexuality, and are facilitated through the utilization of online platforms and technological means. Online Gender-Based Violence (OGBV) typically arises from the violation of privacy and engaging in non-consensual activities towards one or more individuals concurrently.

The term utilized by Komnas Perempuan to describe instances of Online Gender-Based Violence (OGBV) is Gender-Based Cyber Violence (KSBG

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<sup>32</sup> SAFEnet Ellen Kusuma and Nenden Sekar Arum, "Understanding and Responding to Online GenderBased Violence (A Guide)", <https://awaskbgo.id/wp-content/uploads/2020/11/panduan-kbgo-v3.pdf>, 2020.

or Kekerasan Siber Berbasis Gender). Law No. 12 of 2022 concerning Crimes of Sexual Violence, also referred to as the Electronic Based Sexual Violence (KSBE) legislation, is a significant legal framework pertaining to crimes of sexual violence.<sup>33</sup>

According to the Association of Progressive Communication (APC), Online Gender-Based Violence (OGBV) refers to a manifestation of gender-based violence that is facilitated and intensified, either partially or entirely, through the utilization of information and communication technology, including mobile phones, the internet, social media platforms, and e-mail.<sup>34</sup>

Online Gender-Based Violence (OGBV) refers to a manifestation of gender-based violence that occurs through the use of technology, specifically targeting individuals based on their gender or sexuality, with the intention of causing harm or harassment. Victims are subjected to acts of aggression according to their gender and sexual orientation.<sup>35</sup>

Online Gender-Based Violence (OGBV) refers to actions that result in, or have the potential to result in, physical, sexual, or psychological harm to

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<sup>33</sup> Rusti Dian, *11 Types of Online Gender-Based Violence (KBGO) whose Cases Continue to Increase*, found in <https://narasi.tv/read/narasi-daily/11-jenis-kekerasan-berbasis-gender-online-kbgo-yang-kasusnya-terus-mengalami-peningkatan>, accessed on Wednesday, July 26<sup>th</sup> 2023, at 22.13 WIB.

<sup>34</sup> M. Rahmawati and N. Saputri, "Far from the Fire; Looking at the Legal Framework for Gender-Based Violence Online in Indonesia, SAFEnet", Year 2022, p. 19.

<sup>35</sup> Dwi Putri Ayu Wardani, 25 June 2020, "Online Gender-Based Violence", <https://modernis.co/keKerasaan-berbasisgender-online/25/06/2020/>, Accessed on 17 April 2023, at 6.15 WIB.

women. These actions encompass a range of behaviors, such as threats, coercion, or the unjust denial of personal freedom, occurring within both public and private spheres. However, the term "women" include individuals of many gender identities, including transgender males, non-binary individuals, and those who do not conform to traditional gender norms, all of whom may face violence rooted in sexism.<sup>36</sup> Online Gender-Based Violence (OGBV) refers to a manifestation of gender-based violence that occurs through the utilization of digital media platforms.

## 1.2. Forms of Online Gender-Based Violence (OGBV)

Following Veryanto Sitohang, as elucidated by Komnas Perempuan commissioner, there are nine various forms of online sexual violence, which are as follow:<sup>37</sup>

### 1) The Phenomenon of Cyber Hacking

Cyber hacking refers to an illicit activity or enterprise that leverages the internet to unlawfully, covertly, or without authorization, gain access to data owned by others. The data is acquired with the intention of being utilized or altered. Within the framework of online gender-based violence (OGBV), hacking refers to the deliberate act

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<sup>36</sup> Suzie Dunn, Technology-Facilitated Gender-Based Violence: An Overview, Publisher Center for International Governance Innovation, Canada, Tahun 2020, p. 1.

<sup>37</sup> Puti Malya, 9 Types of Violence against Women on the Internet, One of which is Sexting, found in <https://www.parapuan.co/read/532930269/9-jenis-kekerasan-pada-perempuan-di-internet-salah-satunya-sexting?page=all>, accessed on Wednesday, July 26<sup>th</sup> 2023, at 22.32 WIB.



undertaken by an individual with the intention of gaining unauthorized access to the personal data of a targeted individual. This illicit activity aims to get various forms of valuable information, including but not limited to photographs, videos, and other significant documents possessed by the victim. Unauthorized individuals have the ability to assume control of an individual's social media account, thereby becoming perpetrators.

2) Impersonation

Impersonation refers to the utilization of technology to assume the identity of either the victim or another individual, with the intention of gaining unauthorized access to sensitive information, causing embarrassment or shame to the victim, initiating communication with the victim, or fabricating phony identity documents.

3) Cyber Surveillance

Cyber surveillance is alternatively referred to as stalking and tracking.

Cyber surveillance employs technological means to engage in the monitoring and tracking of an individual's actions and conduct, both in real-time and retrospectively. Stalking comprises a series of recurring occurrences, some of which may lack malicious intent. Nevertheless, the collective actions have the potential to erode the victim's perception of safety and induce feelings of discomfort, fear, or intimidation.

#### 4) Cyber Harassment

Cyber harassment refers to the utilization of internet platforms to engage in activities that involve the act of threatening, intimidating, or publicly shaming an individual. The tactics encompass several forms of harmful behavior, such as making threats, engaging in stalking activities, issuing insults, and disseminating private information to third parties. Cyber harassment encompasses instances of sexual harassment that occur within online environments.

#### 5) Cyber Recruitment

The practice of cyber recruitment involves the utilization of technological means to manipulate individuals, so enticing them into unfavorable and perilous circumstances. Typically, those who fall prey to this scheme are approached through internet platforms and enticed with employment prospects. The individuals responsible employ this method as a means of collecting personal information from victims and disseminating their recordings and photographs within online communities.

#### 6) Malicious Distribution

The utilization of technology to disseminate content that has the potential to harm an individual's reputation, irrespective of its veracity.

Similar to the phenomenon known as the NonConsensual Dissemination of Intimate Images (NCII). The individual responsible for the act commonly employs the tactic of issuing threats to disseminate visual media, such as photographs or films, belonging to the targeted individual. One notable distinction lies in the fact that the scope of shared content extends beyond intimate subject matter.

7) Non-Consensual Dissemination of Intimate Image (NCII)

Non-Consensual Dissemination of Intimate Images (NCII) or better known by its problematic term "revenge pornography", is the act of distributing images or videos online without the consent of one or more people involved in the images or videos.

8) Sexting

In her scholarly work titled "Sexting Gender and Teens," Judith Davidson elucidates the concept of sexting as the act of transmitting sexually explicit texts or photographs, emphasizing sexual content, via internet-connected technological devices, specifically smartphones.

9) Morphing

The production of synthetic, counterfeit, or artificial sexual images involves superimposing an individual's facial features onto a sexually explicit body.

### 1.3. The Impact Suffered by Victims of Online Gender-Based Violence (OGBV)

The Association for Progressive Communication (APC) elucidates the typical losses and damages frequently encountered by victims of Online Gender-Based Violence (OGBV), drawing from a range of experiential accounts, namely:<sup>38</sup>

a. Psychological Loss

The individual in question exhibits symptoms of depression and cognitive disruptions when engaging in social media usage or participating in online activities. Victims perceive a sense of surveillance from individuals around them and attribute the role of perpetrators of Online Gender-Based Violence (OGBV) on those who engage with them;

b. Sociological Losses

Victims perceive a deficiency in the quality of their social interactions. Victims express apprehension regarding the disclosure of their experiences with OGBV when engaging in communal activities and interactions, fearing potential discovery by others.

c. Loss of Economic Access

The victims of Online Gender-Based Violence (OGBV) are adversely affected by the threats posed by perpetrators of such violence.

Individuals who suffer from psychiatric disorders that render them

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<sup>38</sup> Maidina Rahmawati, Nabillah Saputri, Far from the Fire Looking at the Legal Framework for GenderBased Violence Online in Indonesia, SAFENet, KPPPA, ICJR, UKAid, p. 152–153.

unable to fulfill the demands of the perpetrator by sending things or money. Victims of sextortion encounter this phenomenon as a means for the perpetrator to cease their threat of disseminating visual content, such as photographs or films, which are under the ownership of the perpetrator. Furthermore, pursuing legal action against the offenders necessitates various expenses, including fees for legal representation and expert witnesses who can provide insights from the victim's standpoint, as well as accommodation costs for the victim's attendance at court proceedings.

d. **Limited Mobility and Self-Censorship**

Victims feel they have lost control over themselves and limit their space for movement in cyberspace and the real world. Victims can do social isolation in the community because of the Online Gender-Based Violence (OGBV) case they experienced.

## **2. Sexual Violence Crime**

### **2.1. Definition of Sexual Violence Crime**

According to the Indonesian Dictionary (KBBI), the term "violence" refers to a phenomenon characterized by a forceful disposition or the presence of compulsion within the actions of an individual or a collective, resulting in bodily harm to either a living being or an inanimate entity.<sup>39</sup> Violence can be defined as a

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<sup>39</sup> Indonesia Dictionary.

physical manifestation of action that has the potential to inflict harm, injury, disability, illness, or suffering upon individuals. It is characterized by the presence of compulsion, refusal, or a lack of consent from those affected.<sup>40</sup>

Simos posits that a crime can be defined as a human action that contravenes established legal norms. The activities undertaken by an individual who possesses accountability can be inferred from the behavior exhibited by said individual, which may provide indications or clues regarding their involvement in a certain act or event.<sup>41</sup>

In the words of Moeljatno, the concept of a criminal conduct refers to an action that is explicitly forbidden by legal statutes, and is followed by the imposition of penalties or consequences for individuals who engage in such banned behavior. According to Andi Hamzah, the term "offense" refers to an act or conduct that is prohibited by law and is accompanied by legal consequences.<sup>42</sup>

Violence is an act that engenders conduct that is originally in violation of legal norms, manifesting either as verbal or physical aggression, and resulting in harm to property, bodily harm, or potential fatality.<sup>43</sup>

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<sup>40</sup> Abdul Wahid and Muhammad Irfan. 2001, Protection of Victims of Sexual Violence: Advocacy for Women's Human Rights. Bandung: Refika Aditama. p. 54

<sup>41</sup> C.S.T. Kansil, 2001, Criminal Law Examination Training, Jakarta: Sinar Graphic, p.106.

<sup>42</sup> C.S.T. Kansil and Christine S.T. Kansil, 2004, Fundamentals of Criminal Law, Jakarta: Pradnya Paramita, p. 54.

<sup>43</sup> Romli Atmasasmitha, Theory & Capita Selekt Criminology, PT. Eresco, Bandung, 1992, p. 55.

According to Yesmil Anwar, violence can be defined as the utilization of physical force, power, or the implementation of threats and actions directed at oneself, an individual, a collective, or society at large. The consequences of such violent acts encompass bodily harm such as bruising or trauma, loss of life, psychological distress, impairments in development, and the infringement upon fundamental rights.<sup>44</sup>

Violence manifests in various forms, including physical violence and sexual violence. Sexual violence can be understood as an act or behavior that instills fear in an individual in regard to matters of intimacy or sexual relations, perpetrated by an individual through the use of force. As a result of these activities, the victim experienced both bodily and psychological harm.

Sexual violence is a sexual crime which in general is an act that violates decency and damages decency and the act is not of the will of the victim through threats of violence.

In accordance with the provisions stated in Law Number 12 of 2022 on Sexual Violence Crime (TPKS Law), the scope of sexual violence crime encompasses all actions that meet the criteria of a criminal offense as stipulated in this legislation, as well as other instances of sexual violence

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<sup>44</sup> Yesmil Anwar, *Reaping Crime: A Sociocultural Approach to Criminology, Law and Human Rights*, UNPAD Press, Bandung, 2004, p. 54.

as defined by the law, provided that they are explicitly included within this legislation.<sup>45</sup>

Victims of sexual violence often experience significant psychological distress. Nevertheless, instances of sexual violence frequently remain unresolved as a result of the denial around the occurrence of such acts. Individuals who have experienced sexual assault often have a reduced inclination to place trust in others, leading them to conceal instances of sexual abuse. Moreover, individuals who have been victimized exhibit reluctance in reporting their attackers due to the apprehension that they may face exacerbated consequences upon disclosure. Additionally, they experience a sense of shame as the occurrences they endure possess the potential to tarnish their family's reputation.<sup>46</sup>

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<sup>45</sup> Article 1 of Law Number 12 of 2022 on Sexual Violence Crime.

<sup>46</sup> Ivo Noviana, 2015, Sexual Violence Against Children: Its Impact and Handling, Journal of Sosio Informa, Vol. 01, No. 1, p. 18.



## 2.2. Types of Sexual Violence Crime

According to Article 4 paragraph (1) of Law Number 12 of 2022 on Sexual Violence Crime, there are 9 (nine) types of Sexual Violence Crime<sup>47</sup>, there are non-physical sexual harassment, physical sexual abuse, forced contraception, forced sterilization, forced marriage, sexual abuse, sexual exploitation, sexual slavery, and electronic based sexual violence.

According to Article 4, paragraph (2) Law Number 12 of 2022 on Sexual Violence Crime:

“In addition to the crime of sexual violence as referred to in paragraph (1), the crime of sexual violence also includes,<sup>48</sup> rape, obscenity, intercourse with a child, obscene acts against a child, and/or sexual exploitation of a child, acts violating decency that are contrary to the will of the victim, pornography involving children or pornography that explicitly contains violence and sexual exploitation, forced prostitution, the criminal act of trafficking in persons which is intended for sexual exploitation, sexual violence within the household, money laundering crime whose predicate crime is a sexual violence crime, other criminal acts that are explicitly stated as criminal acts of sexual violence as stipulated in the provisions of the laws and regulations.”

## 3. Non-Consensual Dissemination of Intimate Image (NCII)

### 3.1. Definition of Non-Consensual Dissemination of Intimate Image (NCII)

In general, these threats can occur due to two situations, namely situations where the content is distributed by someone who knows the victim and at that time obtained from the victim on a consensual basis or a

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<sup>47</sup> Article 4 paragraph (1) of Law Number 12 of 2022 on Sexual Violence Crime.

<sup>48</sup> Article 4, paragraph (2) Law Number 12 of 2022 on Sexual Violence Crime.

situation where the image is taken by someone else without the victim's permission.<sup>49</sup>

At first, the act of Non-Consensual Dissemination of Intimate Images (NCII) was commonly referred to as "revenge pornography". The term "revenge pornography" has fallen out of favor due to its connotation of seeking payback from the victim and its tendency to perpetuate victim blaming.<sup>50</sup> Furthermore, the phrase "revenge porn" denotes the act of disseminating an individual's private and intimate content as a method of seeking retribution, often implying that the victim is at fault for their actions. Consequently, it can be inferred that the term "revenge porn" places blame on the victim and neglects to offer support or empathy towards them.

The notion of Non-Consensual Dissemination of Intimate Images (NCII) was created in England by educators Claire McGlynn and Erika Rackley. Both terms, Non-Consensual Dissemination of Intimate Images (NCII), refer to the act of creating and/or sharing a private photo or video without the explicit consent of the individual depicted in the media. Additionally, it encompasses instances when threats are made to create and/or distribute such images.<sup>51</sup> Typically, these threats might arise from two scenarios: first, instances when the content is disseminated by an

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<sup>49</sup> Suzie Dunn, Loc. Cit., p.9.

<sup>50</sup> Hany Areta A., Hardiana Clarisa, and Siti Chatlia Q., Loc. Cit. p. 2.

<sup>51</sup> Suzie Dunn, Loc. Cit., p.8.

individual familiar with the victim, who first acquired it with the victim's consent; and second, situations where the image is captured by another party without the victim's authorization. In brief, the Non-Consensual Dissemination of Intimate photos (NCII) refers to the act in which an individual use intimate or sexual material (such as photos or films owned by the victim) as a means to coerce and intimidate the victim into complying with their demands.

### **3.2. Forms of Non-Consensual Dissemination of Intimate Image (NCII)**

Based on the Fact Sheet Publication uploaded by Cakra Wikara Indonesia (CWI) there are 3 (three) forms of Non-Consensual Dissemination of Intimate Images (NCII),<sup>52</sup> First, photos or videos are taken clandestinely without the consent and knowledge of the victim, second victims take photos or videos of themselves and send them to others privately, but do not consent to their distribution, third others edit the victim's photos or videos and turn them into intimate content such as deepfakes.

### **3.3. The Impact Suffered by Victims of Non-Consensual Dissemination of Intimate Image (NCII) Crime**

According to clinical psychologist and Co-Founder of Ohana Space Veronica Adesla, M.Psi., the crime of Gender-Based Violence in the form

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<sup>52</sup> Cakra Wikara Indonesia, Publication, Fact Sheet "Non-Consensual Dissemination of Intimate Image (NCII)", February 2022.

of Non-Consensual Dissemination of Intimate Image (NCII) can cause victims to experience trauma, post-traumatic stress disorder (PTSD), anxiety. (anxiety), depression.<sup>53</sup>

1) Trauma

Supratiknya in his book entitled Review of Interpersonal Communication Psychology, explains that psychological trauma can destroy a sense of security, a sense of ability, and self-worth, causing wounds that are very difficult to heal completely.<sup>54</sup> Based on this explanation, it can be concluded that psychological trauma is a condition that results from an unpleasant experience that results in serious disturbances to a person's mental state. Victims of Online Gender-Based Violence (OGBV), especially Non-Consensual Dissemination of Intimate Image (NCII) tend to feel insecure, guilty, and have no self-esteem because they always receive threats from the perpetrator to continue to follow the will of the perpetrator.

2) PTSD (Post Post-Traumatic Stress Disorder)

PTSD (Post-Traumatic Stress Disorder) is a mental health condition that is triggered by a traumatic event. In addition, sufferers also tend to

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<sup>53</sup> Hana Nush Ratu, *Associated with Rebecca Klopper Policing Accounts of Immoral Video Spreaders, What is NCII?*, found in <https://health.detik.com/berita-detikhealth/d-6741194/dikaitkan-rebecca-klopper-polisikan-akun-penyebar-video-syur-apa-itu-ncii>, accessed on Saturday, July 29<sup>th</sup> 2023 at 22.19 WIB.

<sup>54</sup> A. Suprantikna, 1995, *Psychological Review of Interpersonal Communication*, Remaja Rosdakarya, Bandung, p. 65.

avoid something. This includes avoiding thoughts and conversations about the traumatic event or places, activities, or people that are reminiscent of the traumatic event. Not only that, victim could also easily startled or frightened, always alert to danger, tend to behave self-destructively, have trouble sleeping, have difficulty concentrating, and have an extraordinary sense of guilt or shame.<sup>55</sup>

3) Anxiety (Anxietly)

Anxiety in Psychology is defined as a mixed feeling containing fear and concern about the future without a specific cause for the fear and is individual.<sup>56</sup>

4) Depression

According to Beck and Alford, the notion of depression is a psychological disorder characterized by deviations in feelings, cognition, and individual behavior. Individuals who experience depressive disorders can feel sad, alone, have decreased self-concept, and show withdrawal behavior from their environment.<sup>57</sup>

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<sup>55</sup> dr. Rizal Abadi, *PTSD (Post-Traumatic Stress Disorder)*, found in <https://www.halodoc.com/kesehatan/ptsd>, accessed on Saturday, July 29<sup>th</sup> 2023, at 22.52 WIB.

<sup>56</sup> Chaplin, J.P., 2009, *Complete Dictionary of Psychology*, Jakarta: Rajawali Press, p. 32.

<sup>57</sup> Merdeka.com, *Understanding Depression According to Psychologists, Understand the Symptoms*, found in <https://www.merdeka.com/trending/pengertian-depresi-menurut-para-ahli-psikologi-pahami-gejalanya-klm.html>, accessed on Saturday, July, 29<sup>th</sup> 2023 at 23.04 WIB.

### **3.4. Arrangements Regarding Non-Consensual Dissemination of Intimate Image (NCII) Crime before the Law Number 12 of 2022 concerning Sexual Violence Crime (TPKS Law) came into existence**

Before the existence of Law Number 12 of 2022 concerning Crimes of Sexual Violence. In Indonesia's positive law, the rules regarding Online Gender-Based Violence (OGBV) especially, in the form of Non-Consensual Dissemination of Intimate Images (NCII), are not specifically regulated, instead, the perpetrators can be subject to criminal liability based on several related rules as follows:

- 1) The Indonesia Criminal Code.

The criminal act of Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Images, regulated in Article 282 basically explains the prohibition to broadcast, show, pictures or objects whose contents are known to violate decency. If the prohibition in the provision is carried out, the penalty is in the form of imprisonment for

a maximum of 1 year and 6 months or a maximum fine of Rp.4,500.<sup>58</sup>

Furthermore, there are Article 533 paragraphs (3) and (4) which in essence emphasize that a person can be punished with imprisonment

for a maximum of 2 months or a fine of up to Rp. 3000 if openly or

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<sup>58</sup> Article 282 of Indonesia Criminal Code.

without being asked to provide writing, pictures, or items that can stimulate the lust of teenagers/someone who is not yet an adult.<sup>59</sup>

2) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

a. Article 27 Paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

According to Article 27 Paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, “Everyone intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that have content that violates decency.”<sup>60</sup>

As because the crime of Non-Consensual Dissemination of Intimate Image (NCII) was carried out online via the Internet, the perpetrator has violated the provisions of that article. Where for the occurrence of these violations, the perpetrator may be subject to criminal sanctions contained in Article 45 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of

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<sup>59</sup> Article 533 of Indonesia Criminal Code.

<sup>60</sup> Article 27 Paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

2008 concerning Information and Electronic Transactions.

Stipulates that:

"Any person who intentionally and without rights distributes and/or transmits and/or makes information accessible Electronic and/or Electronic Documents that contain content that violates decency as referred to in Article 27 paragraph (1) shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"

- b. Article 29 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

According to Article 29 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, "Everyone intentionally and without right sends Electronic Information and/or Electronic Documents that contain threats of violence or intimidation directed personally."<sup>61</sup>

As we know, in general, the perpetrators of the crime of Non-Consensual Dissemination of Intimate Image (NCII) send messages via social media platforms such as WhatsApp, Twitter, and Instagram which basically threaten the victim to comply with the perpetrator's wishes. So with this, against perpetrators who carry

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<sup>61</sup> Article 29 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.



out acts of cyber harassment such as threatening victims through online or social media platforms, the perpetrators can be declared to have violated the provisions of this article.

3) Law Number 44 of 2008 concerning Pornography

a. Article 4 paragraph 1 of Law Number 44 of 2008 Concerning Pornography

Article 4 paragraph 1 of Law Number 44 of 2008 Concerning Pornography stipulates that it:

“Regulates prohibitions on the act of producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains: (a) sexual intercourse, including sexual intercourse (b) sexual violence (c) masturbation or masturbation (d) nudity or display of nudity (e) genitals or (f) child pornography.”<sup>62</sup>

In accordance with the provisions of the article, for perpetrators who have recorded a photo or video of someone's sexual relations without the knowledge and consent of the person concerned, the perpetrator can be declared to have violated the provisions of this article.

b. Article 29 of Law Number 44 of 2008 concerning Pornography

Article 29 of Law Number 44 of 2008 concerning Pornography stipulates:

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<sup>62</sup> Article 4 paragraph 1 of Law Number 44 of 2008 Concerning Pornography.

“Any person who produces, makes, reproduces, duplicate, disseminate, broadcast, import, exports, offers, trades, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be punished with imprisonment of at least a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp250,000,000, and/or a fine of at least Rp250,000,000.00 (two hundred fifty million rupiah) and a fine of at least hundred and fifty million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah).”<sup>63</sup>

In accordance with the provisions of the article, usually, perpetrator send messages that contain threats by spreading or showing content in the form of images and/or videos containing pornography to other people, if the victim is not willing to do what the perpetrator wants (usually, the perpetrator wants to return to having a relationship with the victim such as reconciliation, or wants to have sexual intercourse again with the victim. Besides that, the perpetrator also uttered harsh words that contained violence at the perpetrator through social media platforms, if the victim did not want to meet the perpetrator.

### **3.5. Non-Consensual Dissemination of Intimate Image (NCII) Crime in the term of Law Number 12 of 2022 concerning Sexual Violence Crime**

The Indonesian Parliament's (Indonesian People's Representative Council) official ratification of Law Number 12 of 2022 concerning Crimes

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<sup>63</sup> Article 29 of Law Number 44 of 2008 concerning Pornography.

of Sexual Violence on April 12th, 2022, has proven to be a breath of new air for the country's sexual violence issue.

The main law that expressly governs criminal acts of sexual violence in Indonesia is the Law Number 12 of 2022 on Crimes of Sexual Violence. Types of sexual violence, protection, victim rights, compensation, and more comprehensive and detailed provisions for OGBV (Gender-Based Online Violence) are all included in this law on sexual violence. Consider that it has anything to do with the crime of sexual violence, namely NCII (Non-Consensual Dissemination of Intimate Image), a type of Gender-Based Sexual Violence. In that situation, it is clear how this Law on Crimes of Sexual Violence may be able to address the issue.

Arrangements regarding Online Gender-Based Violence especially, Non-Consensual Dissemination of Intimate Images (NCII) are found in Article 14 of Law Number 12 of 2022 on Sexual Violence Crime.

According to Article 14 paragraph (1) letter (a), and (b) of Law Number 12 of 2022 on Sexual Violence Crime:

“Any person without the right: a. recording and/or taking sexually charged pictures or screenshots against the will or without the consent of the person who is the object of the recording or picture or screenshot; b. transmitting electronic information and/or electronic documents with sexual content against the will of the recipient aimed at sexual desire; and/or c. stalking and/or tracking using an electronic system against people who are objects in electronic information/documents for sexual purposes. Shall be sentenced for committing electronic-based sexual

violence, with a maximum imprisonment of 4 (four years) and/or fine maximum of Rp. 200,000,000.00 (two hundred million rupiahs).”<sup>64</sup>

In accordance with the provisions of the article, perpetrators who have recorded or screenshot photos or videos of someone's sexual intercourse without the knowledge and consent of the person concerned, transmitting, stalking or tracking someone using electronic-based sexual. The perpetrator can be declared to have violated the provisions of this article.

Besides that, according to Article 14 paragraph (2) of Law Number 12 of 2022 on Sexual Violence Crime:

“If the perpetrator in terms of committing the act referred to in paragraph (1) of Article 14 of Law Number 12 of 2022 on Sexual Violence, it is carried out with the intention of extortion or threats, coercion; or misleading and/or trick someone into doing , allowing something to be done, or not doing something, shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 300,000,000.00 (three hundred million rupiahs)”<sup>65</sup>

As we know the perpetrator of Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Image (NCII) case commonly also use threats, and/or misleading and/or tricking someone into doing, allowing something to be done, or not doing something that they want the victim to do. In accordance with the provisions of the article, the perpetrator can be declared to have violated the provisions of this article.

#### **4. Islamic Law Against Non-Consensual Dissemination of Intimate Image (NCII)**

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<sup>64</sup> Article 14 paragraph (1) letter (a), and (b) of Law Number 12 of 2022 on Sexual Violence Crime.

<sup>65</sup> Article 14 paragraph (2) of Law Number 12 of 2022 on Sexual Violence Crime.

#### 4.1. Definition of Islamic Criminal Law

Islamic criminal law refers to actions that are illegal according to *Syara'* (Islamic law) and are subject to penalty prescribed by Allah Subhanahu wa ta'ala, which may include *hudud* (fixed punishments), *qishash* (retaliation), *diyat* (blood money), or *ta'zir* (discretionary) penalties. The act of *Syara'* is deemed criminal if it is prohibited by *Syara'*.<sup>66</sup>

The term "Islamic Criminal Law" can be understood as a transliteration of the Arabic phrase "*fiqh jinayah*." *Fiqh Jinayah* encompasses the entirety of legal provisions pertaining to criminal activities or offenses done by individuals who are considered legally responsible (*mukallaf*). These provisions are derived from a comprehensive analysis of the specific legal reasoning found in the Al-Qur'an and Hadith.<sup>67</sup>

Islamic Criminal Law refers to the legal framework derived from the *Shari'a* of Allah Subhanahu wa ta'ala. This body of law encompasses provisions that are believed to bring about advantages and benefits to human existence, both in the present life and in the afterlife. The Islamic *Shari'a*, in its essence, encompasses fundamental duties that are incumbent upon all individuals for their implementation. The fundamental principles of the *Shari'a* entail recognizing Allah Subhanahu wa ta'ala as the ultimate

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<sup>66</sup> Zulkarnain Lubis and Bakti Ritonga, *Fundamentals of Jinayah Procedural Law*, Kencana Premedia Group, Jakarta, 2016, p. 1-2.

<sup>67</sup> Dede Rosyada, *Hukum Islam dan Pranata Sosial*, quoted from H. Zainuddin Ali, *Hukum Pidana Islam*, print. 3, 1<sup>st</sup> Edition, Sinar Grafika, Jakarta, 2012, p. 86.

authority, encompassing all rights, both internal and external, that pertain to individuals. Every individual is merely an agent tasked with carrying out the directives of Allah Subhanahu wa ta'ala. The fulfillment of Allah Subhanahu wa ta'ala's intended directive is necessary for the well-being of both individuals and society at large.<sup>68</sup>

#### 4.2. Source of Islamic Criminal Law

In the book named "Principles of Islamic Criminal Law" authored by Prof. Dr. Topo Santoso, S.H., M.H., it is said that Islamic law draws from four primary sources, namely the Al-Qur'an, As-Sunnah, Ijma', and Qiyas. It is crucial to acknowledge the significance of the hierarchical arrangement of sources within Islamic law. The holy book Al-Qur'an holds a prominent position as the primary foundation of Islamic sharia. Following this, As-Sunnah serves as the second source, while Ijma' or consensus is recognized as the third source. Lastly, Qiyas or analogy is considered the fourth source.

##### 1) Al-Qur'an

The Al-Quran is a sacred scripture comprising divine revelations, commencing with Surah Al-Fatihah and concluding with Surah An-Naas. The assertion is made that the sacred text known as Al-Qur'an does not consist of the direct words of the Prophet Muhammad

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<sup>68</sup> H. Zainuddin Ali, *Islamic Criminal Law*, 3rd Copy, Sinar Grafika, Jakarta, 2012, p. 1.

Shalallahu Alaihi Wassalam. The sacred scripture known as the Al-Qur'an is believed to be a divine revelation bestowed upon the Prophet Muhammad Shalallahu Alaihi Wassalam by the angel Gabriel, with the intention of conveying God's message to all of humanity. The religious text known as the Al-Qur'an is commonly referred to by alternative names such as *Al-Kitab* and *Al-Furqon*. It is important to note that this sacred scripture was originally revealed in the Arabic language. The Al-Qur'an serves as the primary and foundational source of Islamic teachings. The Al-Qur'an comprises a compilation of divine revelations from Allah Subhanahu wa ta'ala, which were transmitted to the Prophet Muhammad Shalallahu Alaihi Wassalam. The holy book Al-Qur'an contains several guidelines and regulations that pertain to human existence, encompassing aspects such as the relationship with God, personal growth, interactions with fellow individuals, and the natural world, including other living beings.

2) *As – Sunnah*

The second source from which Islamic teachings are derived is known as *As-Sunnah* or *Hadith*. The term "*As-Sunnah*" encompasses various connotations, including a method, a pathway, a principle, a modus operandi, or a mode of being. The term *As-Sunnah* can also be understood as a method or exemplar. The term *Sunnah* pertains to the actions and sayings of Prophet Muhammad Shalallahu Alaihi

Wassalam, as documented in the hadiths. Nevertheless, in practical terms, these terms encompass the same concept and are utilized to refer to the actions, behaviors, and utterances of the Prophet Muhammad Shalallahu Alaihi Wassalam. There exist three distinct categories of *As-Sunnah*. The initial category is referred to as *qawl*, which encompasses the verbal expressions of the esteemed Prophet Muhammad Shalallahu Alaihi Wassalam. The second category, known as *fi'il*, pertains to the actions or deeds performed by the Prophet Muhammad Shalallahu Alaihi Wassalam. Moreover, the third aspect is to the Prophet Muhammad's silence, which might be interpreted as tacit approval of the actions and deeds of others.

3) *Ijma'*

*Ijma'* is the third source in Islamic law, where the consensus of many Muslim jurists at once regarding a legal question. In short, *Ijma'* is the unanimity of the opinion of *mujtahidin fuqaha* at one time on law after the time of the Prophet Muhammad Shalallahu Alaihi Wassalam.

4) *Qiyas*

According to Shihab Al - Din - Al - Khurafi, an expert on methods in *fiqh*, *qiyas* is determining the usability of a provision in one case against another based on similarity in nature with the first provision.<sup>69</sup>

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<sup>69</sup> Santoso, Topo, Asas – Asas Hukum Pidana Islam, 1<sup>st</sup> Copy, PT. Raja Grafindo Persada, Depok, 2016, p. 56



### 4.3. The Aim of Islamic Criminal Law

Islamic criminal law primarily seeks to uphold justice in accordance with the divine will of Allah Subhanahu wa ta'ala. Consequently, societal order and tranquility are established. The major objective of Islamic law is to address the essential necessities of human life, also known as *daruriyyat*. These demands encompass five core areas of human life interests. In the absence of ensuring these necessities, a state of anarchy and instability will prevail universally. The five essential elements of life as described in Islamic legal literature are commonly known as *al-maqasid al-syariah al-khamsah*, which translates to the aims of *shari'a*, namely:<sup>70</sup>

1. *Hifzh al-din* (maintaining religion);

The presence of religion is inherent to the human condition. Within the Islamic faith, religion serves as a comprehensive framework for the lives of all adherents. Consequently, Muslims are required to incorporate Islamic principles into their decision-making processes, ensuring the preservation of their faith and adherence to divine mandates, while avoiding actions that may compromise their belief system. By doing so, individuals can safeguard their *aqidah*, or theological beliefs, and prevent any potential erosion thereof.<sup>71</sup> As the

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<sup>70</sup> *Ibid*, p. 106.

<sup>71</sup> Novi Rizka Amalia, *The Application of the Maqashid Sharia Concept to Islamic Political Identity Relations in Indonesia*, Daulyah, Number 1, Volume 2, Universitas Darussalam Gontor, 2017, p. 42.

word of Allah Subhanahu wa ta'ala in the Qur'an Surah Asy - Shura verse 13, which reads, "... Uphold Religion and do not divide about it."<sup>72</sup>

2. *Hizh al-nafsi* (naturing the soul);

Islam protects the rights to live, be free, and feel secure. Islam prohibits suicide and murder. This is contained in the word of Allah subhanahu wa ta'ala in the Qur'an Surah An - Nisa verse 29 which reads, "...And do not kill yourselves. Indeed, Allah is Most Merciful to you"<sup>73</sup>, and the Qur'an Surah An – Nisa Verse 93 reads, "And whoever kills a believer on purpose, the reward will be hell, he will abide therein forever. Allah was angry with him, and cursed him and prepared a great punishment for him."<sup>74</sup> Based on the previously mentioned teachings of Allah subhanahu wa ta'ala, it may be inferred that Muslims serve as a valuable resource for fellow Muslims, and the act of providing mutual support is a fundamental element among the five essential requirements. Moreover, within the context of Islam, the act of unlawfully taking the life of a human being is equated to the

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<sup>72</sup> Al – Quran Surah Asy - Shura verse 13.

<sup>73</sup> Al - Qur'an Surah An - Nisa verse 29.

<sup>74</sup> Al – Qur'an Surah An – Nisa verse 93.

extermination of all humanity. Conversely, those who value and preserve life are regarded as safeguarding the entirety of humankind.<sup>75</sup>

3. *Hizh al-'aqli* (maintain mind);

Humans are among the living beings that have been created by Allah Subhanahu wa ta'ala, with the faculty of reason, which distinguishes them from other creatures. Due to the faculty of reason possessed by humans, they are capable of discerning between entities or actions that are morally commendable and those that are morally objectionable. The concept of ownership extends to other entities, including as humans, animals, and other creatures that are believed to have been created by a divine being, including angels.<sup>b</sup> This is contained in the word of Allah Subhanahu wa ta'ala in the Qur'an Surah At - Tiin verse 4, which reads, *"Verily, We have created humans in the best possible form."*<sup>76</sup> *Despite the presence of a rationale, Nevertheless, it is imperative that we retain and safeguard our cognitive faculties in order to prevent any harm to rationality, as such impairment can have detrimental effects on mental well-being and neurological functioning.*

It is highly commendable for individuals, bestowed with the faculty of reason by Allah Subhanahu wa ta'ala, to refrain from engaging in

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<sup>75</sup> Rohidin, *Introduction to Islamic Law (From the Arabian Peninsula to Indonesia)*, 1<sup>st</sup> Copy, Lintang Rasi Aksara Books, Bantul, 2016, e-book, p.31-32.

<sup>76</sup> Al - Qur'an Surah At - Tiin verse 4.

behaviors that have the potential to impair cognitive faculties.<sup>77</sup> This is contained in the word of Allah in the Qur'an Surah Al – Maidah verse 90, which reads, “*O you who believe, verily (drink) intoxicants, gamble, sacrifice to idols, raffle fate with arrows, are abominable acts which include acts of satan, then stay away from these actions so that you will get good luck.*”<sup>78</sup>

4. *Hizh al-nashli* (maintain offspring);

Islam encompasses the safeguarding of human progeny. Marriage is commonly advocated for the purpose of procreating offspring who possess both religious faith and a well-documented pedigree tracing back to their parents. Islam places a strong emphasis on safeguarding progeny, hence imposing a stringent prohibition on adultery and attributing allegations of adultery to anyone, irrespective of gender, without substantiating evidence. Adultery is widely seen as a morally reprehensible behavior due to its potential negative impact on the well-being and development of one's children. Adulterers face severe

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<sup>77</sup> Novi Rizka Amalia, *The Application of the Maqashid Sharia Concept to Islamic Political Identity Relations in Indonesia*, Dauliyah, Number 1, Volume 2, Universitas Darussalam Gontor, 2017, p. 42.

<sup>78</sup> Al - Qur'an Surah Al – Maidah verse 90.

sanctions.<sup>79</sup> Even approaching adultery is prohibited in the word of Allah in the Qur'an Surah Al - Isra verse 32, which reads, *"And do not approach adultery; Verily adultery is an abominable act. And a bad way."*<sup>80</sup>

5. *Hizh al-mal* (maintain property)

Islam recommends protecting the property of a Muslim so that he can lead a prosperous life. "It was narrated from 'Abdillah bin 'Amr and said, "I heard the Prophet SAW say, *"A person who dies for defending his property, then he dies a martyr."* (HR. Bukhari). In addition, Islam adheres to stringent prohibitions against acts of theft, corruption, wasteful consumption of riches, fraud, and robbery due to the inherent harm they inflict upon other individuals or parties, leading to their oppression. This is based on, the word of Allah in the Qur'an Surah Al – Baqarah verse 188 which reads, *"And do not some of you eat the property of some of the others in a vanity way and do not bring the matter of the property to the judge, so that you can eat some of the property of others by sinning, but you know."*<sup>81</sup>

It is widely recognized that the fulfillment of the five primary human wants holds significant importance. The significance of these pillars of

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<sup>79</sup> Rohidin, *Op.Cit*, p. 34.

<sup>80</sup> Al - Qur'an Surah Al - Isra verse 32.

<sup>81</sup> Rohidin, *Op.Cit*, p. 35.

need lies in their role in sustaining the human-inhabited world. The fulfillment of these five essential requirements is important for the attainment of human existence in a world characterized by absolute harmony and serenity. Hence, the preservation of the five fundamental wants is integral to the preservation of human dignity.

#### 4.4. Classification of Islamic Criminal Law

Within the framework of Islamic jurisprudence, two distinct terminologies are employed to denote criminal offenses, specifically, *jinayah* and *jarimah*. According to *Fukuha*, it can be contended that the concept of *jinayah* is synonymous with the term *jarimah*. The term *jarimah* refers to the legal prohibitions established by Allah Subhanahu wa ta'ala, which also encompass the determination of infractions.<sup>82</sup>

Legal prohibition refers to the act of engaging in an activity that is explicitly forbidden by law or refraining from carrying out an action that is mandated by law. A crime is defined as an act that is prohibited by sharia law. The rationale behind the inclusion of criminal offenses and corresponding punishments in sharia law is rooted in the recognition that certain activities have the potential to undermine the establishment of

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<sup>82</sup> Santoso, Topo, Asas – Asas Hukum Pidana Islam, 1<sup>st</sup> Copy, PT. Raja Grafindo Persada, Depok, 2016, p. 108.

societal order, disrupt prevailing beliefs, infringe upon human lives, encroach upon property rights, and tarnish personal honor.<sup>83</sup>

According to Abdul Qadir 'Audah, not a crime can be classified according to certain criteria.<sup>84</sup> The classification of criminal sentences is based on the severity or leniency of the crime committed. This categorization includes *hudud* crimes, *qisash* and *diyat* crimes, and *ta'zir* crimes. The category of *hudūd* crimes encompasses offenses such as adultery, allegations of adultery, theft, highway robbery, and the consumption of *khamr*. *Qisas* and *diyat* crimes encompass purposeful killings, killings that bear intentional resemblance, accidental kills of others, intentional infliction of injuries, accidental infliction of injuries, and offenses classified under *ta'zir* crimes. These crimes, specifically referred to as "namely crimes," encompass all criminal activities that have not been previously addressed..<sup>85</sup>

In connection with the research conducted by the author, Cases of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) are classified based on the severity or severity of the crime in Islamic criminal law. Thus, it can be classified into *hudud* crimes.

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<sup>83</sup> *Ibid.*

<sup>84</sup> Abdul Qadir 'Audah, *Criminal Law of Islam*, quoted from Topo Santoso, *Principles of Islamic Criminal Law*, 1st copy, PT. Raja Grafindo Persada, Jakarta, 2016, p. 90 – 123.

<sup>85</sup> *Ibid*, p. 114.

*Hudud* offenses represent the gravest offenses under the framework of Islamic penal law. *Hudud* crimes encompass offenses that are deemed detrimental to the welfare and well-being of the general public. Nevertheless, it should be noted that *hudud* offenses might indeed have an impact on individual interests. However, *hudud* offences primarily pertain to offenses that are strongly associated with the divine rights of Allah Subhanahu wa ta'ala.<sup>86</sup>

Jarimah hudud refers to a criminal offense that is subject to the imposition of various punishments. The term *had* in English refers to the act of creating a boundary or barrier between two entities, preventing them from intermingling with others. It can also denote the demarcation or dividing line between one entity and another, or the separation between two entities that already possess distinct limits.<sup>87</sup>

According to 'Abdul 'Aziz 'Amir, the *hadd* is a distinct form of punishment that is considered the prerogative of Allah, may He be revered and elevated. Moreover, as stated by Abdu Shuhbah, the authority to impose the *had* is not vested in the caliph or qadi, and there is no room for leniency in its implementation.<sup>88</sup> According to Wahbah Zuhayli, the

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<sup>86</sup> *Ibid*, p. 116.

<sup>87</sup> Reni Surya, Classification of Hudud Crimes and Sanctions in the Perspective of Islamic Law, Journal of Family Law and Islamic Law, Number 2, Volume 2, Universitas Islam Negeri (UIN) Ar-Raniry, 2018, p.532.

<sup>88</sup> Muhammd bin Muhammad Abu Syuhbah, *al-Hudud fi al-Islam Muqaranatuha bi al-Qawanin al-Wad'iyyah*, quoted from Reni Surya, *Klasifikasi Tindak Pidana Hudud dan Snaksinya dalam Perspektif Hukum Islam*, Jurnal Hukum Keluarga dan Hukum Islam, Volume 2, Nomor 2, 2018, p. 641.



term *had* can be defined as a legal requirement that, if transgressed, results in the offender being subjected to the specific punishment prescribed in the Qur'an. It is important to note that these punishments cannot be altered or modified in any way.<sup>89</sup>

Due to the provided explanation, it can be comprehended that *had* is a form of punishment that is prescribed based on specific boundaries, categories, and quantities. This punishment is regarded as the prerogative of Allah, the Supreme Being, implying that it cannot be augmented or diminished by any entity and lacks any maximum or minimum threshold. The term "right of Allah Subhanahu wa ta'ala" in this context refers to any penalty deemed necessary for the preservation of public interest and the maintenance of peace and security within the community. In essence, every transgression that undermines the societal interests might be perceived as an infringement of the divine rights of Allah, hence warranting retribution in accordance with the stipulations prescribed by Allah.

Regarding the author's study on Online Gender-Based Violence (OGBV), specifically focusing on the Non-Consensual Dissemination of Intimate Images (NCII). The Non-Consensual Dissemination of Intimate

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<sup>89</sup> Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa 'Adillatuh*, quoted from Reni Surya, *Klasifikasi Tindak Pidana Hudud dan Snaksinya dalam Perspektif Hukum Islam*, Jurnal Hukum Keluarga dan Hukum Islam, Volume 2, Nomor 2, 2018, p.12.

Images (NCII) is intricately linked to the realms of pornography and adulterous behavior, falling under the category of *jarimah hudud*.

*Zina* refers to the act of engaging in sexual intercourse between a man and a woman who are not legally married. This act involves the insertion of the penis into an illicit *faraj*, characterized by a lack of lawful consent and driven by instinctual and carnal desires.<sup>90</sup>

The prohibition of adultery is confirmed by Allah Subhanahu wa ta'ala, in His words contained in the Qur'an Surah Al – Isra' verse 32, "And do not approach adultery (*zina*); Verily adultery is an abomination and a bad way."<sup>91</sup>

#### **4.5. Non-Consensual Dissemination of Intimate Images (NCII) from the Perspective of Islamic Law**

It is widely recognized that the majority of instances involving the Non-Consensual Dissemination of Intimate Images (NCII) are typically perpetrated by individuals of both genders who are not engaged in a lawful or sanctioned relationship, such as marriage. It can be inferred that a significant proportion of instances involving the Non-Consensual Dissemination of Intimate Images (NCII) are initiated in the context of extramarital affairs. Adultery is explicitly and unambiguously prohibited in

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<sup>90</sup> Abdul Aziz Dahlan, *Ensiklopedi Islam*, quoted from Reni Surya, *Klasifikasi Tindak Pidana Hudud dan Snaksinya dalam Perspektif Hukum Islam*, Jurnal Hukum Keluarga dan Hukum Islam, Volume 2, Nomor 2, 2018, p. 6.

<sup>91</sup> Qur'an Surah Al – Isra' verse 32.

Islam. *Zina*, often known as adultery, refers to the act of engaging in sexual relations or intercourse between a man and a woman who are not legally married to one another. The term *zina* encompasses those who are both married and single. In the Islamic faith, adultery is regarded not only as a significant transgression but also as a catalyst for a range of dishonorable behaviors. This immoral act is believed to erode the fundamental structure of the family unit, leading to numerous conflicts, acts of violence, reputational damage, financial loss, and the proliferation of physical and psychological afflictions.<sup>92</sup>

Adultery can be regarded as a manifestation of pornography. The term pornography in this context encompasses all forms of sexual activity that are deemed harmful, including both in-person encounters involving unconventional sexual orientations (such as differences between sexes or same-sex interactions) and sexual encounters that deviate from customary procedures, such as those out the bounds of marriage, commonly referred to as *zina* in religious discourse.

The Non-Consensual Dissemination of Intimate Images (NCII) is a criminal violation involving the distribution of explicit content, such as photographs or films, without the consent of the individuals shown.

According to Ernst and Seagle, pornography can be defined as any form of

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<sup>92</sup> Santoso, Topo, *Op.Cit.*, p.159.

visual representation that portrays individuals or animals engaging in sexual activities, regardless of whether these activities are considered typical or deviant. Hence, the term pornography connotes objects or materials pertaining to sexual content.<sup>93</sup> In accordance with Law Number 44 of 2008 pertaining to pornography, the term "pornography" is defined as the depiction of explicit content through numerous mediums, including but not limited to sketch images, illustrations, photographs, written material, audio recordings, video recordings, animations, cartoons, verbal exchanges, gestures, or any other kind of communication. The topic under consideration pertains to forms of communication and public presentations that incorporate obscenity or sexual exploitation, so contravening societal standards of decency.<sup>94</sup>

The inclusion of explicit sexual content and the overall genre of pornography play significant roles in the creation, dissemination, and consumption of pornographic materials. The genre of pornography is considered a fundamental component in the production of illicit goods. In the Islamic faith, both explicit sexual acts and the production and consumption of pornography are considered to be forbidden. In the Islamic faith, the engagement in both explicit sexual acts and the consumption of

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<sup>93</sup> Mega Ardina, The Effect of Pornographic Views on Social Media on the Behavior of Sexual Harassment in Adolescents in Yogyakarta, *MEDIALOG: Journal of Communication Studies*, Volume IV, No. II, August 2021, p. 225.

<sup>94</sup> Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography.

explicit sexual material, commonly referred to as pornography, are strictly forbidden and regarded as acts of adultery. Islam strongly condemns adultery, as it is considered a grave transgression. In adherence to Islamic teachings, Muslims are instructed by Allah to exercise caution and refrain from succumbing to the allure of temptations that may lead to engaging in adulterous acts.

In Al-Qur'an, there are several verses, namely Qur'an Surah Al-Isra' verse 32, Qur'an Surah Al-A'raf verse 26, and Qur'an Surah An-Nur verses 30-31, which can be understood as an indication of the prohibition of porno-action and pornography.

In Islamic law, everything regarding adultery is prohibited, not only adultery, even approaching adultery is prohibited by Islamic law. Allah's Word in the Qur'an Surah Al - Isra 'verse 32:

وَلَا تَقْرَبُوا الزَّانِيَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning: "And do not approach adultery (zina); Verily adultery is an abomination and a bad way."<sup>95</sup>

The issue of sexual content and pornography within the context of Islam is intricately linked to matters concerning genitalia, particularly in

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<sup>95</sup> Qur'an Surah Al – Isra' verse 32.

connection to measures for safeguarding genitalia, appropriate attire, and the practice of averting one's sight (*ghaddhdh al-basyar*). The term *aurat* originates from the Arabic language and denotes the presence of gaps or defects inside the human body's limbs, which are perceived as unseemly and perhaps embarrassing to observe.<sup>96</sup>

The command to close the vein can be seen in the Word of Allah Qur'an Surah Al - A'raf verse 26:<sup>97</sup>

يَبْنَىءَ آءَءَمَ قءَ أَنزَلْنَا عَلَيْكُمُ لِبَءَسًا يُؤَرِي سَوَءَءَتِكُمْ وَرِيءَءًا وَلِبَءَسَءَ النُّقُوءِ  
ذَءِكُ خَيْرٌ ذَءِكُ مِّنْ آءَءَتِ اللّهِ لَعَلَّهُمْ يَذَّكُرُونَ ﴿٢٦﴾

Meaning: "O son of Adam, indeed We have sent down to You clothes to cover your nakedness and beautiful clothes for jewelry. Moreover, the clothes of piety are the best. Because that is part of the signs of Allah's power, hopefully, they will always remember.

Based on the aforementioned verses of the Al-Qur'an, it can be inferred that Allah SWT has prescribed the act of concealing one's private parts through the use of a more inclusive terminology, referred to as "clothes of piety." According to Thahir Ibnu Asyur, the concept of "taqwa clothing"

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<sup>96</sup> Yandi Maryandi, Pornography and Pornoaction (Historical Perspective and Islamic Law), Journal of Islamic Civilization and Law, Volume 1, Number 1, Faculty of Sharia Universitas Islam Bandung, 2018, p. 22.

<sup>97</sup> Qur'an Surah Surah Al – A'raf verse 26.

encompasses both an internal and external attire that serves to uphold the holiness and dignity of individuals. The interpretation provided by Al-Azhar also elucidates the meaning of this verse, suggesting that "taqwa" might be metaphorically understood as a form of attire.<sup>98</sup>

The Islamic prohibition against pornography can be seen in the following hadiths:

"From Ibn Usamah bin Zaid that his father Usamah said, "The Messenger of Allah gave me a type of translucent white outer double clothing made in Egypt that Dihyah al-Kalbi gifted. Then I gave it to my wife (to use). The Messenger of Allah asked me; why don't you use that qubthiyah ? I answered; I gave (as clothes) my wife. The Messenger of Allah said to me; tell your wife to wear double in (because) I'm worried that the clothes will show the shape of her body." (Hadith History of Ahmad)<sup>99</sup>

"From Aisyah r.a that Asma binti Abu Bakr entered the Prophet's house while wearing thin clothes, then the Prophet turned away from her and said: a woman when she has reached adulthood cannot be seen from her body

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<sup>98</sup> Yandi Maryandi, Pornography and Pornoaction (Historical Perspective and Islamic Law), Journal of Islamic Civilization and Law, Volume 1, Number 1, Faculty of Sharia Universitas Islam Bandung, 2018, p. 33.

<sup>99</sup> Yandi Maryandi, Pornography and Pornoaction (Historical Perspective and Islamic Law), Journal of Islamic Civilization and Law, Volume 1, Number 1, Faculty of Sharia Universitas Islam Bandung, 2018, p. 32.

except this and this. He pointed to his face and both palms.” (Hadith History of Abu Dawud)<sup>100</sup>

It is widely acknowledged that the two hadiths encompass two fundamental elements. Initially, the imposition of restrictions on the utilization of translucent attire. Furthermore, there exists a restriction that restricts men from observing the exposed bodies of women. According to the given definition of pornography, it may be inferred from the two hadiths that the presence of nudity is considered a contributing factor in the establishment of prohibitions. The act of altering or modifying curves or body forms is strictly prohibited. Hence, within the realm of comprehending muwafaqah, the aforementioned hadiths allude to two additional fundamental aspects. The hadith encompasses the ban of creating explicit and sexually explicit materials. Furthermore, it encompasses a prohibition on the consumption, perusal, and appreciation of pornographic materials (any items with the potential to be transformed into pornographic content are strictly disallowed). The two hadiths suggest that women possess the capacity to be perceived as objects by men, although in an implicit manner.<sup>101</sup>

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<sup>100</sup> Yandi Maryandi, Pornography and Pornoaction (Historical Perspective and Islamic Law), Journal of Islamic Civilization and Law, Volume 1, Number 1, Faculty of Sharia Universitas Islam Bandung, 2018, p. 32.

<sup>101</sup> Yandi Maryandi, Pornography and Pornoaction (Historical Perspective and Islamic Law), Journal of Islamic Civilization and Law, Volume 1, Number 1, Faculty of Sharia Universitas Islam Bandung, 2018, p. 32.



Based on the Word of God listed in the Qur'an Surah An – Nur verse

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قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ذَٰلِكَ أَزْكَىٰ لَهُمْ إِنَّ اللَّهَ خَيْرٌ بِمَا يَصْنَعُونَ

Meaning: "Say to the believing men, so that they guard their eyes and private parts; that is purer for them. Indeed, Allah is All-Knowing of what they do."

The aforementioned passage from Qur'an Surah An – Nur, elucidates two principles, as previously delineated by the author: the regulation of one's gaze and the restraint of one's sexual organs, which are considered essential components of human anatomy. The aforementioned connection between the preceding poem and pornography, as elucidated in the preceding definition, establishes a close correlation between sexual action with visual media or perceptible textual content.

On August 2, 2001 with number 287/2001 MUI Faywa Commission, established eleven important decisions regarding pornography and pornography.

1. Depicting, directly or indirectly, erotic behavior, whether by means of paintings, drawings, writing, sounds, billboards, advertisements, or utterances, whether through print or electronic media that can arouse lust is haram;

<sup>102</sup> Qur'an Surah An – Nur verse 30.

2. Leaving naked genitals open and/or wearing tight or see-through clothes with the intention of having a picture taken, either for printing or visualization, is haram;
3. Taking pictures as referred to in number 2 is unlawful;
4. Performing sexual intercourse or sexual scenes in front of other people, taking pictures of sexual relations or sexual scenes, either for oneself or others, and viewing sexual relations or sexual scenes is unlawful;
5. Reproducing, distributing, selling, buying and viewing or showing pictures of people, whether printed or visual, whose nakedness is exposed or in tight or see-through clothing that can arouse lust, or pictures of sexual relations or sexual scenes are haram;
6. Doing intimate or alone together (khalwat) between a man and a woman who are not his mahram, and other similar acts that approach and or encourage sexual relations outside of marriage are unlawful;
7. Exposing the genitals, namely the body parts between the navel and the knees for men and other parts of the body other than the face, palms and soles for women, is unlawful, except in things that are justified by syar'i;
8. Wearing see-through or tight clothing that can show the curves of the body is unlawful;
9. Doing an act and/or saying something that can encourage sexual relations outside of marriage or the act referred to in number 6 is unlawful;
10. Helping in all its forms and or allowing without denying the actions that are forbidden above are forbidden;
11. Obtaining money, benefits, and/or facilities from the actions mentioned above are prohibited.<sup>103</sup>

Non-Consensual Dissemination of Intimate Image (NCII) is the dissemination of pornographic content which can be in the form of pictures, videos, and as determined by the MUI Fatwa Commission number 1, it can be concluded that Non-Consensual Dissemination of Intimate Image (NCII) is one of the acts of pornography which is forbidden in Islam, apart

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<sup>103</sup> Ministry of Religion of the Republic of Indonesia, Fatwa Assembly of Indonesian Assembly of Ulama, Number 287 of 2001 Concerning Pornoaction and Pornography.

from that it is explained in numbers 2, and 2 it can be said that Making vulgar content as the object of NCII is an act that is forbidden.

Instances of Non-Consensual Dissemination of Intimate Images (NCII) occasionally arise within couples who are engaged in a halal relationship or have entered into marriage. It is not uncommon for married couples to engage in the creation of videos or photographs jointly, with the intention of sharing them on social media platforms or for personal record-keeping purposes.

As stated by Ustadz Ahmad Kusyairi Suhail, the General Chairperson of the Indonesian Dai Association (IKADI), he asserts that the act of recording videos or taking photographs during sexual intercourse between spouses is deemed unlawful. This prohibition extends even to cases where such videos or photos are intended for documentation purposes or for the personal consumption of the married couples involved. The individual had the belief that documenting explicit sexual encounters through video recordings would result in moral degradation and a decline in aesthetic qualities. Furthermore, this course of conduct fails to align with the principles of Shari'a in upholding notions of dignity and safeguarding personal integrity. Furthermore, the making of sexual intercourse movies

has no discernible advantages; on the contrary, it poses a substantial danger of injury.<sup>104</sup>

According to Ustaz Ahmad Kusyairi Suhail, the act of recording visual content possesses the capacity to facilitate the dissemination of explicit sequences depicting intimate connections, a practice that is widely condemned and prohibited.”<sup>105</sup>

Ustadz Kusyairi provided a series of reasons grounded in the hadith and the Qur'an that bolstered the prohibition of spouses engaging in the act of filming recordings depicting sexual intercourse. Among them the *hadith* of the Prophet. From Abu Said RA, Rasulullah SAW said: "Indeed, the worst human being in the position with Allah on the Day of Resurrection is a man who has intercourse with his wife and then he spreads the secret of his bed." Based on Hadith History of Muslim number 1437. Also, in another *hadith* it is also explained: "Verily (the violation of) the greatest trust with Allah on the Day of Judgment is a man who has intercourse with his wife and a wife has intercourse with her husband, then he spreads the secret of his bed.”, based on Hadith History of Muslim number 1437.<sup>106</sup>

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<sup>104</sup> Republika, Tatan Syuflana, *Can Husbands and Wives Record Videos During Sex?*, found in <https://www.republika.id/posts/11854/bolehkah-suami-istri-merekam-video-ketika-berhubungan>. Accessed on Tuesday, August 15<sup>th</sup> 2023, at 12.57 WIB.

<sup>105</sup> Republika, Tatan Syuflana, *Can Husbands and Wives Record Videos During Sex?*, found in <https://www.republika.id/posts/11854/bolehkah-suami-istri-merekam-video-ketika-berhubungan>. Accessed on Tuesday, August 15<sup>th</sup> 2023, at 12.57 WIB.

<sup>106</sup> Republika, Tatan Syuflana, *Can Husbands and Wives Record Videos During Sex?*, found in <https://www.republika.id/posts/11854/bolehkah-suami-istri-merekam-video-ketika-berhubungan>. Accessed on Tuesday, August 15<sup>th</sup> 2023, at 12.59 WIB.

### CHAPTER III FINDINGS AND RESULTS

#### **A. The Appropriateness to Settle Online Gender-Based Violence (OGBV) Cases in the form of Non-Consensual Dissemination of Intimate Images (NCII) to use Law Number 11 of 2008 concerning Information and Electronic Transactions, and Law Number 44 of 2008 concerning Pornography at Yogyakarta Special Region**

Based on the interview with Andrias Irawan Saputro, S.H., as an investigator at the Special Region of Yogyakarta Police, the researcher found that the Police in the Special Region of Yogyakarta Police, are still using Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), and the Law Number 44 of 2008 concerning Pornography, even though Indonesian National Police Chief (Kapolri) ordered to enforce Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) to be used in Indonesia.<sup>107</sup>

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<sup>107</sup> Munti, Ratna Batara, “*The Voice: A Number of Police Refuse to Use the TPKS Law, a Serious Challenge in Handling Victims*”, contained in <https://www.konde.co/2023/01/the-voice-sejumlah-polisi-tolak-gunakan-uu-tpks-tantangan-berat-penanganan-korban-kekerasan-seksual.html/>, accessed on Tuesday, 25<sup>th</sup> July 2023, at 3.02 WIB.

When the perpetrators commit sexual violence of NCII (Non-Consensual Dissemination of Intimate Image), they used the internet or electronic media as the medium. Therefore, as stated by Andrias Irawan Saputro, even though NCII (Non-Consensual Dissemination of Intimate Image) is a form of sexual violence, it is still considered more appropriate to use Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions regulation.<sup>108</sup>

Meanwhile, according to Sri Hartati, S.H., M.H., as the Public Prosecutor at the Yogyakarta District Attorney's Office, she stated that Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) cannot be implemented effectively due to the unavailability of The Government Regulation (*Peraturan Pemerintah*). There are no guidelines (*petunjuk pelaksanaan*) and technical instructions (*petunjuk teknis*) from the institution, especially those related to procedural law. This is why Police Investigators refuse to use the Sexual Violence Law.<sup>109</sup>

Also, based on information obtained from Sri Hartati, S.H., M.H.'s colleague, who attended educational training related to the Law on Crimes of Sexual Violence, implementing regulations related to the Law on Crimes of

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<sup>108</sup> Interview with Mr. Andrias Irawan Saputro, S.H., as an Investigator from the Special Crime Division of the Special Region of Yogyakarta Police, at the Special Region of Yogyakarta Police, on Thursday, May 25, 2023.

<sup>109</sup> Interview with Mrs Siti Hartati, S.H., M.H., as Public Prosecutor at the Yogyakarta District Attorney, on Friday, June 9 2023.

Sexual Violence is indeed being drafted by the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia.<sup>110</sup>

According to Tri Asnuri Herkutanto, S.H., M.H., as the Judge at the Yogyakarta District Court, if there is no coercion in sexual intercourse, and the scene recording is done consensually. This case would be suitable with the Electronic Information and Transaction Law (ITE Law).

The regulation of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) is regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), specifically in Article 27 paragraph (1).

Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) states, "Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency."<sup>111</sup> The Non-Consensual Dissemination of Intimate Images (NCII) is perpetrated online, specifically on the internet. Thus, it violates the stipulations outlined in the article, as mentioned earlier. In breach cases, the individual who

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<sup>110</sup> Interview with Mrs Siti Hartati, S.H., M.H., as Public Prosecutor at the Yogyakarta District Attorney, on Friday, June 9, 2023.

<sup>111</sup> Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law).

is responsible may be subjected to criminal penalties as stipulated in Article 45, paragraph (1) of Law Number 19 of 2016, which pertains to the amendments made to Law Number 11 of 2008 respecting Electronic Information and Transactions. Stipulates that:

"Any person who intentionally and without rights distributes and/or transmits and/or makes information accessible Electronic and/or Electronic Documents that contain content that violates decency as referred to in Article 27 paragraph (1) shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah)"

Unfortunately, the elements of "violating of decency" in Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) are not appropriate when used as a regulation in resolving cases of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII), because they are considered not to protect victims of decency in the electronic realm or victims, and instead criminalize victims. This is because the element of "decency" is completely unclear because it is not specifically defined by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

Upon examining the discourse within the Criminal Code, it becomes evident that the concept of "decency" is intricately delineated in Chapter XIV, which explicitly addresses crimes against decency. According to R. Soesilo, decency, which is also referred to as *zeden* and *eerbaarheid*, encompasses a



sense of shame associated with sexual desires and actions, including engaging in sexual intercourse, touching a woman's breasts or genitals, exposing one's genitals or engaging in kissing activities. Hence, it can be inferred that offenses against propriety encompass transgressions that violate an individual's sense of modesty concerning sexual desire.

If "violating decency" is meant by an element of a criminal offense in the Criminal Code, then there are limited acts in the Criminal Code that contain the element of "violating decency", which are scattered in Book 2 on crimes and Book 3 on offenses.

**Tabel 1.2**

**The Element of "Crimes of Decency" in Book 2 of The Criminal Code**

No.	Article	Article Contents
1.	Article 281 number 1	<b>deliberately open / in public</b> violates decency;
2.	Article 281 number 2	breaking decency <b>in front of others against one's will;</b>
3.	Article 282 paragraph (1)	broadcasting, showing, or posting <b>in public</b> writings, images, or objects whose contents are known to violate decency;
4.	Article 282 paragraph (2)	broadcast, show, or post <b>in public</b> writings, images, or objects that violate decency;

5.	Article 283 paragraph (1)	offer to give continuously or temporarily, deliver, or show writings, drawings, or objects which violate decency <b>to people who are immature;</b>
6.	Article 283 paragraph (2)	read the contents of writings that violate decency <b>in front of people who are immature;</b>
7.	Article 283 paragraph (3)	the same as paragraph (1) if there is a strong reason for him to suspect that the content violates decency

Source: Book 2 of The Criminal Code

**Tabel 1.3**

**The Element of "Violating Decency" in Book 3 of the Criminal Code**

No.	Article	Article Contents
1.	Article 532 number 1, and 2	<b>publicly</b> singing songs, <b>making speeches</b> that violate decency;
2.	Article 532 number 3	<b>in a place that is visible from a public road,</b> writes or depicts something that violates decency

Source: Book 3 of The Criminal Code

The element of "violating decency" can only materialize in an unrestricted environment, namely in the public realm that can be seen from a

street accessible to the public and in the presence of individuals who have not reached the age of maturity. However, there is a provision whereby an act, when performed in the private realm, can be considered to "violate decency" only if its content is against the individual's will, or such that there is no consent between the parties.

In contrast to this assurance, the provisions outlined in Article 27 paragraph (1) of Law Number 19 of 2016, which pertains to amendments made to Law Number 11 of 2008 concerning Information and Electronic Transactions, provide a contradictory stance. The provision stated in Article 27 paragraph (1) of Law Number 19 of 2016, which pertains to the amendments made to Law Number 11 of 2008 concerning Information and Electronic Transactions, can encompass private or personal communication for instance where the transmission of content occurs without any opposition from the other party (voluntarily).

The context in which Article 27 paragraph (1) of Law Number 19 of 2016, which pertains to the amendments made to Law Number 11 of 2008 concerning Information and Electronic Transactions, defines the terms "transmitting" and "making accessible" are incongruous with the contextual meanings of "in public" and "open," as well as conflicting with the concept of "the will of others."

It is imperative to ascertain the precise definition of "transmitting" as stipulated in Article 27 paragraph (1) of Law Number 19 of 2016, which

pertains to the amendments made to Law Number 11 of 2008 concerning Information and Electronic Transactions. In this context, "transmitting" refers to dispatching electronic information and/or documents to a specific recipient via an electronic system.<sup>112</sup> The term "making accessible," as defined in Article 27 paragraph (1) of Law Number 19 of 2016, which pertains to Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, encompasses all activities apart from the distribution and transmission through an electronic system that results in the disclosure of Electronic Information and/or Electronic Documents to third parties or the general public.<sup>113</sup>

Referring to Decision from Number 75/Pid.Sus/2019/PN. Bpp, regarding the defendant's conviction for a criminal offense based on Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The defendant was proven legally and convincingly guilty of transmitting photos that explicitly contained his genitals to his partner through private communication media on the Hornet and Blued applications. The Panel of Judges elaborated on the verdict.

"Considering, that based on the testimony of the witness ... the fact is obtained that the defendant consciously intended and knew that the actions of the

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<sup>112</sup> Explanation of Article 27 paragraph (1) of Law Number 19 of 2016 on the Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions.

<sup>113</sup> Explanation of Article 27 paragraph (1) of Law Number 19 of 2016 on the Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions.

defendant ... while the act of sending a photo of the penis or male genitals, which was sent or transmitted to his friend on behalf of asRuLLLL on November 14, 2018 at 02.01 is an unlawful act so that this element has also been fulfilled."<sup>114</sup>

Upon examination of the regulations outlined in the Decency Chapter of the Criminal Code and Law No. 44 of 2008 on Pornography (Pornography Law), it becomes apparent that there is a lack of criminal provisions that specifically address the act of privately and consensually transmitting obscene photos to involved parties. When examining the structure of the Criminal Code, one can observe that it prohibits various actions regarding disseminating indecent content. These actions include purposefully and overtly engaging in indecent behavior, intentionally violating decency in the presence of individuals who are unwilling participants, as well as broadcasting, displaying, or affixing in public any form of written material, images, or objects that are recognized to contravene standards of decency.

In contrast, Law Number 44 of 2008 on Pornography, also is referred to as the Pornography Law, includes a provision that grants an exception to the proscription of "creating," "possessing," or "retaining" explicit material for personal use and individual interests. In contrast, the activities of the defendant, as delineated in the aforementioned ruling, fail to align with the constituent elements of any criminal formulation.

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<sup>114</sup> Adhigama A. Budiman Genoveva Alicia K.S. Maya Maidina Rahmawati Zainal Abidin, *Reorganizing Criminal Policy in Cyberspace (Study on the Implementation of ITE Law in Indonesia)*, Institute for Criminal Justice Reform (ICJR), Jakarta, 2021, e-book, p. 91.

The Public Prosecutor to classify the defendant's act of transmitting an image of his genitals through private communication as an act of "violating decency" as stipulated in Article 281 of the Criminal Code, which pertains to "engaging in indecent behavior in the presence of others without their consent," it is imperative for the Public Prosecutor to substantiate that the defendant's actions were indeed performed against the explicit desires of the recipient.

The provision, as mentioned earlier in Article 281, is found in the second volume of the Criminal Code and states the offense of engaging in indecent acts in the presence of unwilling individuals. The stipulation states that when indecent behavior is not conducted in a public setting, it is deemed adequate for conviction if such behavior occurs in the presence of another individual, under the condition that said individual does not consent to or desire such actions. The absence of this information is evident in the indictment.

Another incident involved a prominent female public personality identified by the initials GA (pseudonym). GA was implicated in a comparable incident involving distributing pornographic material initially intended for personal use. Other parties shared this material on social media platforms without the explicit approval of MYD and GA. In brief, during the year 2017, GA and MYD, her extramarital lover, engaged in sexual activity in a hotel located in Medan. Additionally, they documented their sexual encounter using GA's mobile device. Before the unauthorized dissemination of a 19-second

explicit film by an external party, GA had discreetly and consensually shared such video, comprising explicit content, with MYD.

According to Dr. Solichul Huda M.Kom., an expert in digital forensics, it is possible to argue that GA might potentially be held accountable under the Electronic Information and Transaction Law (ITE). This is due to GA's alleged act of transmitting explicit movies and photographs to MYD using the AirDrop feature. According to Dr. Solichul Huda M.Kom., an expert in digital forensics, the present case could potentially be prosecuted under Article 27, paragraph (1) of Law Number 19 of 2016, which pertains to Amendments to Law Number 11 of 2008 concerning Information and Electronic Transaction (ITE Law). This provision stipulates that individuals who distribute or transmit digital content may be held liable. In the specific context of the GA case, as per her confession, it is evident that she admitted it transmitting the video file from GA's device to MYD's device. Therefore, it potentially falls within the scope of the aforementioned provision. This falls under the classification of transmission, indicating that it may be subject to the provisions of Article 27, paragraph (1) of Law Number 19 of 2016, which pertains to Amendments to Law Number 11 of 2008 concerning Information and Electronic Transaction (ITE Law).<sup>115</sup>

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<sup>115</sup> Taufik Budi, *If this device is not found by the police, Gisel can be released from the film case*, found in <https://metro.sindonews.com/read/294274/170/jika-perangkat-ini-tidak-ditemukan-polisi-gisel-bisa-lepas-dari-kasus-video-syur-1610089305>. Accessed on Saturday, August 12th 2023, at 13.10 WIB.

This is undoubtedly very dangerous for victims of GBV, especially in the form of Non-Consensual Dissemination of Intimate Images (NCII) . Most victims of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) start by transmitting photos or videos that contain pornography privately.

In response to the aforementioned issues, a Joint Decree (No. 229 of 2021, No. 154 of 2021, No. KB/2/VI/2021) was signed on June 23, 2021 by the Minister of Communication and Information, the Attorney General, and the Chief of the Indonesian National Police. This decree pertains to the guidelines for the implementation of specific articles within Law No. 11 of 2008, which concerns electronic information and transactions, as amended by Law No. 19 of 2016 on the same subject matter.

Stipulated in Joint Decree Number 229 of 2021, Number 154 of 2021, and Number KB/2/VI/2021 concerning Implementation Guidelines for Certain Articles in Law Number 11 of 2008 concerning Electronic Information and Transactions as Amended by Law Number 19 of 2016 concerning Electronic Information and Transactions regarding Article 27 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions as Amended by Law Number 19 of 2016 concerning Electronic Information and Transactions letter (a) reads, "The meaning of the phrase "content violating decency" in a narrow sense is interpreted as pornographic content as stipulated



in Law Number 44/2008 on Pornography and/or offenses related to decency as stipulated in Article 281 and Article 282 of the Criminal Code."<sup>116</sup>

Based on the Joint Decree, it can be concluded that Article 27 paragraph (1) of the Electronic Information and Transaction Law, in terms of its implementation guidelines, has referred to Articles 281 - 282 of the Criminal Code (KUHP) and Law Number 44 of 2008 concerning Pornography.<sup>117</sup>

Unfortunately, this is not the same as the Criminal Code or the Pornography Law stipulating that violating decency must be done in public or for commercial purposes. As explained in the Joint Decree on the Implementation Guidelines for Certain Articles in the Electronic Information and Transaction Law, for Article 27 paragraph (1) letter (d), which reads, content that has material that violates decency that is transmitted and/or distributed or disseminated can be done using one transmission to one person or many people (shared, broadcast, uploaded, or posted)."<sup>118</sup>

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<sup>116</sup> Joint Decree of the Minister of Communication and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the National Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021 concerning Implementation Guidelines for Certain Articles in Law Number 11 of 2008 concerning Electronic Information and Transactions as Amended by Law Number 19 of 2016 concerning Electronic Information and Transactions.

<sup>117</sup> Article 27 paragraph (1) letter a in the Joint Decree of the Minister of Communication and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the Indonesian National Police Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in Law Number 11 of 2008 concerning Electronic Information and Transactions as Amended by Law Number 19 of 2016 concerning Electronic Information and Transactions.

<sup>118</sup> Article 27 paragraph (1) letter a in the Joint Decree of the Minister of Communication and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of the Indonesian National Police Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in Law Number 11 of

Based on the definition of the element of "transmitting" contained in Article 27 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions as Amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, it can be concluded that this element can ensnare anyone who sends content that violates decency (in this case means pornographic content that can increase sexual desire), which is carried out by a single transmission to an individual even though it is transmitted consensually between the two parties.

As the researcher has explained, this implementation guideline can still criminalize consensual correspondence in the private sphere without strictly ensuring that the criminalized act is the act of transmission, distribution, or making accessible, which is intended for public consumption. It is important to note that charges may be levied in such cases, albeit without explicit clarification that the criminalized action pertains to the act of transmitting the information. Instead, the focus lies on the intention to disseminate or make information accessible to the public. This situation continues to present the possibility of criminalizing individuals who have experienced Online Gender-Based Violence (OGBV) online, specifically through the unauthorized sharing of intimate images or private correspondence which were not intended for public consumption or commercial purposes.

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2008 concerning Electronic Information and Transactions as Amended by Law Number 19 of 2016 concerning Electronic Information and Transactions.

The possible criminalization of victims is deemed to be present in Law Number 19 of 2016, which pertains to the amendments made to Law Number 11 of 2008 about Information and Electronic Transactions (ITE Law). The efficacy of Law Number 19 of 2016, which pertains to amendments made to Law Number 11 of 2008 concerning Information and Electronic Transactions, in safeguarding individuals from potential criminality under Law Number 44 of 2008 concerning Pornography remains questionable. The reason is that the individuals who are victimized are perceived as participants in the creation of pornographic material, an act that is deemed illegal according to Law Number 44 of 2008 pertaining to Pornography.

Article 4 paragraph (1) jo. Article 29 of Law Number 44 of 2008 on Pornography which reads:

"Every person is prohibited from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains: a. intercourse, including deviant intercourse; b. sexual violence; c. masturbation or masturbation; d. nudity or the appearance of nudity; e. genitals; or f. child pornography."

The provision of threats regarding this offense is contained in Article 29 of Law Number 44 of 2008 concerning Pornography which reads:

"Every person who produces, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, sells, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah)."

Nevertheless, it should be noted that according to the elucidation provided in Article 4, paragraph (1) of Law No. 44 of 2008 concerning Pornography, the term "making" does not encompass activities conducted solely for personal purposes and self-gratification. The researcher argues that the legal and constitutional rules in Indonesia should safeguard the right to engage in personal interest-related consumption of pornographic recordings, even in cases where an individual is involved as a cast member in such content.

The analysis suggest that the provisions contained in Article 4 paragraph (1) of the Pornography Law does not explicitly prohibit the production of photographs or videos containing pornographic material, provided that the content is intended solely for personal use and is made with the mutual consent of all persons involved in the visual content. However, suppose one party in the image or video content does not consent to the recording. In that case, recording the content is not allowed under the law. This is regulated in Article 6 of Law Number 44 of 2008 on Pornography, which reads, "Every person is prohibited from listening to, showing, utilizing, possessing, or storing pornographic products as referred to in Article 4 paragraph (1), except those authorized by laws and regulations."<sup>119</sup>

According to the researcher's perspective, if the individuals involved, a man and a woman, have a mutual agreement to engage in the production of a

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<sup>119</sup> Article 6 of Law Number 44 of 2008 concerning Pornography.

pornographic recording just for personal use and without any intention of distributing it, then the recording can be considered permissible. This notion is further supported by the provision outlined in Article 4, paragraph (1) of Law Number 44/2008 concerning Pornography.<sup>120</sup>

Technically, pornographic videos or images are automatically stored in the electronic media storage systems. The researcher argues that storing and possessing sexually charged content is not prohibited as long as the pornographic content is only used for personal purposes. The regulation related to this is contained in Article 6 of Law Number 44 of 2008 on Pornography, which reads, "The prohibition of "owning or storing" does not include for oneself and one's benefit."<sup>121</sup> However, suppose one individual does not explicitly consent to this. In that case, storing or possessing the content may be considered unlawful.

The legal framework permits the production and retention of explicit visual material, provided that all involved parties have given their informed consent, and that such material is intended solely for personal use and not for dissemination. However, this scenario presents a potential risk of unauthorised access and dissemination of the explicit content by external actors who unlawfully acquire the stored material.

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<sup>120</sup> Article 4, paragraph (1) of Law Number 44 of 2008 concerning Pornography.

<sup>121</sup> Explanation of Article 6 of Law Number 44 of 2008 concerning Pornography.

A historic incident occurred involving a female public figure identified by the initials GA. The individual referred to as GA was involved in a comparable incident when pornographic material, initially intended for personal use, was disseminated across social media platforms without her explicit authorisation. In 2017, two individuals, referred to as GA and MYD, engaged in sexual activity within the premises of a hotel located in Medan. During this encounter, GA utilised a smartphone device to document their acts. In November 2020, a piece of content featuring a 19-second explicit video gained traction on many social media platforms, depicting a female character bearing a striking resemblance to GA. The Chairman of the Indonesian Young Fighters Alliance NGO, Febrianto Dunggio, reported a 19-second pornographic film to the Police (Polda Metro Jaya) and the Ministry of Communication and Information Technology. The report was made on the basis of the potential disturbing video to the public. Subsequently, GA personally disclosed the occurrence of a breach in personal data, subsequent to an enquiry conducted by law enforcement authorities, on December 29, 2021. GA and MYD had been identified as potential suspects according to the provisions stated in Article 4 Paragraph (1) in conjunction with Article 29 and/or Article 8 in conjunction with Article 34 of the Pornography Law. The aforementioned offences carry penalties that include a minimum imprisonment term of 6 (six) months and a maximum of 12 years, as well as a fine ranging from at least 250 million rupiah

to a maximum of 6 billion rupiah.<sup>122</sup> This case highlights the lack of legal protection for individuals identifying as gender ambiguous (GA) who experience gender-based violence (GBV).

Also, this case had been in the media spotlight, both in Indonesia and abroad. The Sun, a British tabloid newspaper, called GA's case harsh justice.<sup>123</sup> On December 30, 2020, the South China Morning Post, a Hong Kong media outlet, highlighted the GA case in an article titled "Indonesian women's rights activists advocate for singer entangled in anti-pornography legislation." According to a report by the South China Morning Post, the Indonesian government has implemented regulations under the Anti-Pornography Law that restrict the dissemination and consumption of adult content within the country. Even if it is for personal purposes, there is a possibility of legal repercussions resulting in imprisonment for the performer. The individuals known as GA and MYD, who appeared together in a controversial film, may potentially be subjected to a maximum prison sentence of 12 years.<sup>124</sup>

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<sup>122</sup> Gisela Rumuli Violin, and Yvonne Kezia D. Nafi, Protection of Online Gender-Based Violence Victims: A Feminist Legal Analysis, *The Indonesian Journal of Socio-Legal Studies*, Volume 1, Number 2, 2022, p.9-10.

<sup>123</sup> Christy Cooney, *HARSH JUSTICE Singer facing jail after her sex tape was stolen from her phone and leaked online in Indonesia*, found in <https://www.thesun.co.uk/news/13619643/singer-jail-sex-tape-stolen-phone-leaked-online-indonesia/>. Accessed on Thursday, 17<sup>th</sup> August 2023, at 16.10 Indonesia Western Time.

<sup>124</sup> Anton Suhartono, *Foreign media outlets The Sun and SCMP defend Gisel over her nude video, criticize anti-pornography law*, found in <https://jabar.inews.id/berita/media-asing-the-sun-dan-scmp-bela-gisel-terkait-video-syur-kritik-uu-antipornografi/all>. Accessed on Thursday, August 17<sup>th</sup> 2023, at 16.15 Indonesia Western Time.

The controversial nature of designating GA and MYD as suspects arises from the conflict with the Pornography Act, which seeks to safeguard individuals who engage in the consensual creation and possession of pornographic materials for personal purposes by refraining from criminalising such activities.

The article discusses the legal implications of the Online Gender-Based Violence (OGBV) case, specifically the dissemination of intimate content without consent (NCII), as outlined in Article 27 (1) of Law Number 19 of 2016. This law pertains to amendments made to Law Number 11 of 2008, which deals with Information and Electronic Transactions (ITE Law). The charges in question involve the intentional distribution, transmission, or accessibility of electronic information or documents that contain indecent content, without proper authorisation.

Still, there is a distinction between the aforementioned scenario and the one involving GA and MYD. In the latter case, GA and MYD were not the individuals responsible for disseminating the explicit video footage. Rather, they were wrongly implicated as suspects despite being victims who deserved protection. They should be regarded as victims deserving of protection due to their status as parties adversely affected by the dissemination of an immoral video.

If we look at the Explanation of Article 4 paragraph (1) of Law No. 44 of 2008 on Pornography (Pornography Law) regarding the prohibition of



"making", and Article 6 of Law No. 44 of 2008 on Pornography regarding the prohibition of "possessing" or "storing", there are nomenclatures "excluding for themselves" and "for their own interests", GA and MYD are the parties that should be protected because they recorded for themselves and for their own interests, and they also did not want the immoral video to be spread to the public.

Furthermore, within the context of the elucidation of Article 6 of Law No. 44 of 2008 pertaining to Pornography (Pornography Law), it is stipulated that those who own or retain pornography for personal consumption are indeed granted legal permission, irrespective of the moral implications associated with their actions. According to the researcher's perspective, the primary focus of the investigators should be directed at the party that is accused of disseminating the film, rather than GA and MYD.

Another problem contained in Law No. 44 of 2008 on Pornography is the provision that prohibits people from intentionally or with their consent becoming an object or model of pornography, this statement is contained in Article 8 of Law No. 44 of 2008 on Pornography which reads, "Every person is prohibited from intentionally or with their consent becoming an object or model containing pornographic content."<sup>125</sup> The penalty provisions regarding this offense are contained in Article 34 of Law No. 44 of 2008 on Pornography

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<sup>125</sup> Article 8 of Law No. 44 of 2008 on Pornography.

which reads, "Any person who intentionally or with his/her consent becomes an object or model containing pornographic content as referred to in Article 8 shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp5,000,000,000.00 (five billion rupiah)."<sup>126</sup> There is an Explanation in Article 8 of Law Number 44 of 2008 on Pornography which reads, "This provision is intended that if the perpetrator is forced by threats or threatened or under the power or pressure of another person, persuaded or deceived, or lied to by another person, the perpetrator is not punished."<sup>127</sup>

The researcher assumes that the scope of protection provided by the Explanation of Article 8 of Law No. 44 of 2008 on Pornography (Pornography Law) is confined to individuals who are coerced through intimidation, subjected to the control or influence of another person, manipulated or deceived, or misled into becoming subjects or models of pornography. Hence, it is imperative to interpret this clause within the framework of the model not being subjected to coercion, threats, or any form of manipulation, whether by the exertion of power, pressure, inducement, deception, or falsehoods perpetrated by another individual. The model must possess a conscious awareness that the photograph, video, or any other manifestation of pornography is meant for public distribution, rather than solely for personal consumption.

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<sup>126</sup> Article 34 of Law No. 44 of 2008 on Pornography.

<sup>127</sup> Explanation of Article 8 34 of Law Number 44 of 2008 on Pornography.

Based on the volitional view, the attribution of purposeful criminal behavior is contingent upon an individual's deliberate volition to engage in the said conduct. Therefore, an individual is considered to engaged in an "intentional" criminal act when they possess the "volition" to fulfill the constituent components of the offense as defined by the legal framework.<sup>128</sup> When referring to the theory of intent in the criminal law, a pornographic model can be punished if the model knows and intends the act of recording and also the consequences of spreading the recording. As we know, neither GA nor MYD intended these conditions, so this element is not found in their case.

The naming of GA and MYD as suspects reflects the interpretation that if someone records an indecent video, they are also responsible for the spread of the recording. This is because he should have known the risks that might occur if someone else made the recording public. This interpretation does not pay attention to the position of the victim, and instead criminalizes the victim, thus the victim becoming the suspect of the case.

In connection with the case, Sri Wiyanti Eddyono, lecturer and director of the Center for Research on Law, Gender and Society at the Faculty of Law, Universitas Gadjah Mada, argued that GA should be shown as a victim. The act of recording for personal documentation purposes by an individual and their

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<sup>128</sup> Leden Marpaung, Principles of Criminal Law Theory and Practice, Sinar Grafika, Jakarta, 2005, p.44

partner does not meet the criteria for a criminal offence, as it lacks any element of coercion. However, the act of distributing the footage without proper authorization, which contains electronic data, becomes a violation of the law. Hence, the utilisation of Law No. 44/2008 pertaining to Pornography is not applicable for the prosecution of individuals identified as GA and MYD.<sup>129</sup>

According to Mamik Sri Supatmi, an academican affiliated with the Department of Criminology at the Faculty of Social and Political Sciences, University of Indonesia, there is a perspective that GA can be considered as a victim. Conversely, individuals who disseminate the film can be considered perpetrators of criminal activity. According to Mamik, it is not considered a criminal offence to record consenting sexual conduct.<sup>130</sup>

Meanwhile, Maidina Rachmawati, a Researcher at The Institute For Criminal Justice Reform, an analysis of Law Number 44 of 2008 pertaining to Pornography reveals that individuals featured in a video who express their unwillingness for its distribution cannot be subjected to legal conviction. This is due to the presence of a significant constraint outlined in Article 4 of the aforementioned law, which stipulates that individuals engaged in the act of

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<sup>129</sup> Kompas.id Sonya Hellen Sinombor, *When the State Enters the Private Area*, found in [https://www.kompas.id/baca/dikbud/2021/01/04/ketika-negara-masuk-ke-wilayah-pribadi?status=sukses\\_login&status\\_login=login](https://www.kompas.id/baca/dikbud/2021/01/04/ketika-negara-masuk-ke-wilayah-pribadi?status=sukses_login&status_login=login). Accessed on Friday, 18<sup>th</sup> August 2023, at 18.25 Indonesia Western Time.

<sup>130</sup> Kompas.id Sonya Hellen Sinombor, *When the State Enters the Private Area*, found in [https://www.kompas.id/baca/dikbud/2021/01/04/ketika-negara-masuk-ke-wilayah-pribadi?status=sukses\\_login&status\\_login=login](https://www.kompas.id/baca/dikbud/2021/01/04/ketika-negara-masuk-ke-wilayah-pribadi?status=sukses_login&status_login=login). Accessed on Friday, 18<sup>th</sup> August 2023, at 18.25 Indonesia Western Time.

"making" such content cannot be held liable if their actions are motivated by personal purposes and interests.<sup>131</sup>

Based on the author's depiction, it may be inferred that Law No. 44 of 2008 concerning Pornography is deemed unsuitable and inadequate in addressing instances of gender-based violence in the form of non-consensual intimate image dissemination. The possibility for legal uncertainty and diminished legal protection arises from the multi-interpretive nature of Law No. 44 of 2008 on Pornography, which also carries the risk of criminalizing individuals who are actually victims.

As a result of the rise of Online Gender-Based Violence (GBV) cases in the form of Non-Consensual Dissemination of Intimate Images (NCII), which are resolved using the Electronic Information and Transactions Law (ITE Law) and the Pornography Law which tend to criminalise victims, victims are reluctant to report their cases to the Police.

Researchers found more than 50 (fifty) victims of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Yogyakarta Special Region, who chose not to report the

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<sup>131</sup> Zakki Amali, Why GA, MYD & Other Victims of Pornography Should not be Criminalized, found in <https://tirto.id/mengapa-ga-myd-korban-pornografi-lain-seharusnya-tak-dipidana-f8DM>. Accessed on Friday, 18<sup>th</sup> August 2023, at 18.34 Indonesia Western Time.

violence they experienced to the police, this number is high compared to the number of victims who reported violence to the police.

Based on the data from the Yogyakarta Special Region Police (POLDA DIY), the complaints regarding pornography and immoral cases from 2021 to 2023. Can be seen as follow.

**Tabel 1.4**

**Table of Complaint Data to Special Region of Yogyakarta Police Regarding Pornography and Immoral Cases in 2021 – 2023**

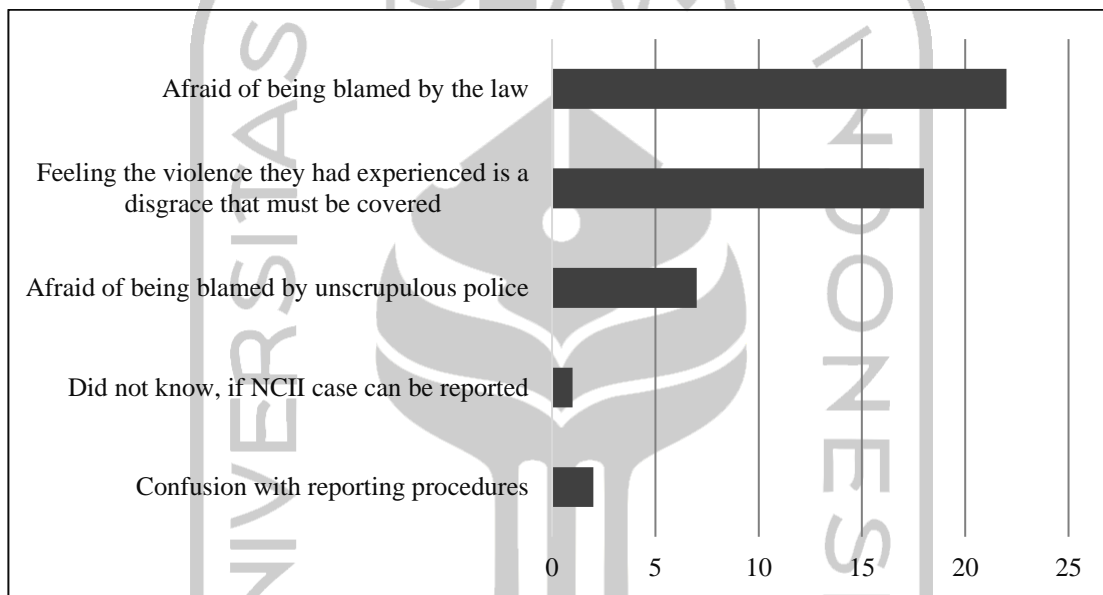
No.	Year	Complaint
1.	2021	25
2.	2022	28
3.	2023	15

Source: Directorate of Special Criminal Investigation (Ditreskrimsus) of the Special Region of Yogyakarta Police (POLDA DIY)

Based on the data obtained by the author, with 52 (fifty-two) respondents in the Special Region of Yogyakarta using Google Form Questionnaire, all of them are victims of Online Gender-Based Violence (GBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) who chose not to report their cases to the Police. In this research, the author describes the reasons why the victims of Online Gender-Based Violence (GBV), especially in the form of Non-Consensual Dissemination of Intimate Images (NCII), are reluctant to report the violence they experienced to the Police.

**Diagram 1.2**

**Why Reasons Why Victims of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) Reluctant to Report Their Case to Police**



Source: Research data obtained by the author

As we can see, based on the data obtained by the researcher, one of the common reasons is fear of being criminalized by Law Number 19 of 2016 concerning the Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions, and the Law Number 44 of 2008 concerning Pornography. We can conclude, that many victims are reluctant to report to the police because they are afraid of being blamed by the law that has not taken sides on the victim.

Besides that, based on the researcher's interview with the NCII (Non-Consensual Dissemination of Intimate Images) victim who did not report her case to the Police, the victim named Jeje (pseudonym) said that she had known her ex-boyfriend since she was in high school and had a very close relationship with the perpetrator when she was in college. They then had sexual intercourse, then recorded and took pictures of that intimacy consensually. However, Jeje did not realize that the photos and videos were later became a threat to Jeje. Initially, the relationship between Jeje and the perpetrator was acceptable. However, over time the relationship between them became increasingly unhealthy. Jeje's ex-boyfriend (the perpetrator) often threatened Jeje, so Jeje always obey the perpetrator's wishes, such as having sexual intercourse with the perpetrator again. Every time Jeje wanted to end the relationship. Jeje's ex-boyfriend threatened to spread their intimate videos and photos, and every time Jeje wanted to report the violence she experienced to the Police, the perpetrator always threatened to kill Jeje. In the end, Jeje encouraged herself to talk to her older sister.

Surprisingly, her older sister advised Jeje not to report the case that Jeje experienced to the Police. Jeje's older sister even blamed Jeje because Jeje did not refuse when her ex-boyfriend wanted to record their sexual intercourse scene and continued to blame Jeje for her actions. According to Jeje's older sister, it is considered normal for men to have sex with women even before marriage. However, women are considered disgraceful if they agree to have



intimate relationships with men before marriage. If Jeje dared to report the violence she experienced to the Police, Jeje could potentially be charged with a crime because she had made and produced pornography scenes (sex tape), such as GA's case. In the end, Jeje did not report the violence she experienced to the Police.<sup>132</sup>

Based on the results of interviews conducted by researchers with one of the victims of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII), namely, Jeje (a pseudonym). It can be seen that, as a result of the rampant cases Online Gender-Based Violence (OGBV) victims, especially in the form of Non-Consensual Dissemination of Intimate Images (NCII), instead of receiving legal protection, victims are criminalized as a result of a law that is not in favor of the victim. This clearly makes victims feel so afraid to report their cases to the Police.

Based on the previous explanation, we can see that Online Gender-Based Violence (OGBV) in Indonesia, especially in Yogyakarta, is like an iceberg phenomenon. Only the surface is visible, while the depth (darkness) of this case cannot be guessed. Many cases do not appear on the surface for various reasons. Starting from the victim's lack of courage to report, lack of community support, security guarantees from law enforcement, to laws that are not in favor of victims. In cases of Online Gender-Based Violence (GBV), especially in the

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<sup>132</sup> Interview with Jeje (pseudonym) as a Victim of NCII (Non-Consensual Dissemination of Intimate Image) in the City of Yogyakarta, on Tuesday, March 21, 2023.

form of Non-Consensual Dissemination of Intimate Images (NCII), victims are often threatened by perpetrators when they want to report these acts of violence. The victims, in this case mostly women, who choose to remain silent about the actions against them because they are afraid that their intimate videos and photos will be spread by the perpetrators. Often, victims also receive death threats when reporting their cases.

Therefore, it can be concluded that the ITE and pornography laws cannot be said to be appropriate in resolving Online Gender-Based Violence (OGBV) cases, especially in the form of Non-Consensual Dissemination of Intimate Images (NCII), because the articles governing Online Gender-Based Violence (OGBV), especially in the form of Non-Consensual Dissemination of Intimate Images (NCII), do not protect victims, and are actually vulnerable to criminalizing or ensnaring victims.

**B. The Urgency of Law Number 12 of 2022 on Sexual Violence Crime in resolving Online Gender-Based Violence (OGBV) Case in the form of Non-Consensual Dissemination of Intimate Images (NCII)**

The growth of internet connectivity and the increased accessibility of online platforms have given rise to a novel manifestation of criminal behaviour named Online Gender-Based Violence. Online Gender-Based Violence (OGBV) represents a contemporary manifestation of violence occurring within the digital realm. According to Kusuma and Arum, the phenomenon of

technology-facilitated online gender-based violence (OGBV) can be understood as analogous to offline acts of gender-based violence. The individuals responsible for these acts of violence possess the deliberate intention to subject victims to harassment on the basis of their gender or sexuality.<sup>133</sup> Gender-Based Violence (GBV) refers to acts of violence that are committed against individuals based on their gender or sexual orientation, resulting in physical, psychological, or sexual injury. These acts involve the use of force and the restriction of personal freedom. Lidwina Inge Nurtjahyo has provided this definition of GBV.<sup>134</sup>

Online Gender-Based Violence (OGBV) takes many forms, one of them that is currently become a global phenomenon is Non-Consensual Dissemination of Intimate Images (NCII). Citron and Franks, emphasize the definition of Non-Consensual Dissemination of Intimate Image (NCII) or previously called revenge porn, as the distribution of sexually graphic images of individuals without their consent.<sup>135</sup>

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<sup>133</sup> Ellen Kusuma dan Nenden Sekar Arum, Understanding and Responding to Online Gender-Based Violence (A Guide), found in <https://safenet.or.id/wp-content/uploads/2019/11/Panduan-KBGO-v2.pdf>. Accessed on Wednesday, August 16<sup>th</sup>, 2023, at 14.15 Indonesia Western Time.

<sup>134</sup> Lidwina Inge Nurtjahyo (The Conversation), Sexual Violence on The Internet Rises During The Pandemic and Tragets Juvenile: Recognize Its Forms and What can be Done, found in <https://theconversation.com/kekerasan-seksual-di-internet-meningkat-selama-pandemi-dan-sasar-anak-muda-kenali-bentuknya-dan-apa-yang-bisa-dilakukan-152230>. Accessed on Wednesday, August 16<sup>th</sup>, at 14.26 Indonesia Western Time.

<sup>135</sup> Citron, D. K., & Franks, M. A. (2014). Criminalizing Revenge Porn. Wake Forest Law Review, vol. 49, p. 346.

According to SAFEnet (Southeast Asia Freedom of Expression Network), the number of complaints for Non-Consensual Dissemination of Intimate Images (NCII) was 508 (75%), followed by 150 other forms of complaints, and 19 (nine teenagers) unidentified complaints. From the data presented, it can be said that Indonesia has a fairly high percentage, which reflects the number of NCII (Non-Consensual Intimate Image) cases reported.

Online Gender-Based Violence (OGBV), especially Non-Consensual Dissemination of Intimate Image (NCII), have been regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). And it is also regulated in Article 14 paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence which reads:<sup>136</sup>

"Any person who without right: a. records and/or takes pictures or screenshots containing sexual intercourse without the consent or without the will of the person who is the object of the recording or pictures or screenshots; b. transmits electronic information and/or electronic documents with sexual content against the will of the recipient intended for sexual desire; and/or; c. conducts stalking and/or tracking using electronic systems against the person who is the object of the electronic information/document for sexual purposes, shall be punished for committing electronic-based sexual violence, with imprisonment of up to 4 (four) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah)."

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<sup>136</sup> Article 14 paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

In line with the above-mentioned provisions, the perpetrator can be declared to have violated the provisions of this article if they recorded, took screenshots, photos, or videos of a person's sexual intercourse, transmitted, stalked, or tracked a person without their consent.

Besides that, according to Article 14 paragraph (2) of Law Number 12 of 2022 on Sexual Violence Crime:

“If the perpetrator in terms of committing the act referred to in paragraph (1) of Article 14 of Law Number 12 of 2022 on Sexual Violence, it is **carried out with the intention of extortion or threats, coercion; or misleading and/or trick someone into doing , allowing something to be done, or not doing something**, shall be subject to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 300,000,000.00 (three hundred million rupiahs)”<sup>137</sup>

As we know the perpetrator of Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Image (NCII) case commonly also use threats, and/or mislead and/or trick someone into doing, allowing something to be done, or not doing something that they want the victim to do. In accordance with the provisions of the article, the perpetrator can be declared to have violated the provisions of this article.

Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) not only becomes the umbrella law that explicitly regulates criminal acts of sexual violence in Indonesia but also regulates several contents such as types of sexual violence, protection, rights, and restitution for victims. To be more

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<sup>137</sup> Article 14 paragraph (2) of Law Number 12 of 2022 on Sexual Violence Crime.

comprehensive and in-depth for Online Gender Based Violence (OGBV). Suppose it is related to the Non-Consensual Dissemination of Intimate Image (NCII) case, a form of Online Gender Based Violence (OGBV). In that case, we can see that the Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) can accommodate problems regarding Non-Consensual Dissemination of Intimate Image (NCII) cases ranging from prevention, handling, and law enforcement to victim recovery.<sup>138</sup>

Preventive efforts can be done by educating the public about sexual violence, increasing public awareness regarding the forms, ways of reporting, and handling cases of Online Gender-Based Violence (OGBV) in Indonesia, and inviting the public not to commit, and fight all forms, and especially acts of sexual violence. Meanwhile, repressive efforts are the further actions after the occurrence of a crime. This can be done by strengthening the criminal law system in Indonesia, making regulations that specifically regulate crimes of sexual violence and providing appropriate sanctions to perpetrators of sexual violence.

Based on the interview of Andrias Irawan Saputro, S.H., as an investigator at the Special Region of Yogyakarta Police, researchers found the fact that the Police in the Special Region of Yogyakarta Police are still using

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<sup>138</sup> Azza Fitrahul, and Muhammad Rifqi Hariri, "Legal Protection for Victims of Revenge Porn as a Form of Gender-Based Online Violence Judging from Law Number 12 of 2022 concerning Crimes of Sexual Violence", *Rewang Rancang: Journal of Lex Generalis Law*. Vol.3. No.7(July 2022) <https://jhlgr.wangrencang.com/>

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), and The Law Number 44 of 2008 concerning Pornography, even though Indonesian National Police Chief (Kapolri) has sent a telegram with the number ST/1292/VI/RES.1.24/2022, which order to all Regional Police Chiefs (Kapolda) in Indonesia, in all regions to enforce Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law).<sup>139</sup>

According to Mr. Andrias Irawan Saputro, S.H., Police in the Special Region of Yogyakarta Police, are still using Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), and The Law Number 44 of 2008 concerning Pornography because Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions because is considered more specific to regulate NCII (Non-Consensual Dissemination of Intimate Image).<sup>140</sup>

As we know, the perpetrators when committing sexual violence NCII (Non-Consensual Dissemination of Intimate Image) use the internet or electronic media as a medium to commit violence. So, according to Mr. Andrias

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<sup>139</sup> Munti, Ratna Batara, “*The Voice: A Number of Police Refuse to Use the TPKS Law, a Serious Challenge in Handling Victims*”, contained in <https://www.konde.co/2023/01/the-voice-sejumlah-polisi-tolak-gunakan-uu-tpks-tantangan-berat-penanganan-korban-kekerasan-seksual.html/>, accessed on Tuesday, 25<sup>th</sup> July 2023, at 3.02 WIB.

<sup>140</sup> Interview with Mr. Andrias Irawan Saputro, S.H., as an Investigator from the Special Crime Division of the Special Region of Yogyakarta Police, at the Special Region of Yogyakarta Police, on Thursday, May 25, 2023.

Irawan Saputro, S.H., as an investigator at the Special Region of Yogyakarta Police, even though NCII (Non-Consensual Dissemination of Intimate Image) is a form of sexual violence the solution is still considered more appropriate using the Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions regulation.

Meanwhile, according to Mrs. Sri Hartati, S.H., M.H., as the Public Prosecutor at the Yogyakarta District Attorney's Office, states that Law Number 12 of 2022 concerning Crimes of Sexual Violence (TPKS Law) cannot be implemented effectively due to the unavailability of The Government Regulation (*Peraturan Pemerintah*). There are no implementation instructions (*petunjuk pelaksanaan*) and technical instructions (*petunjuk teknis*) from the institution, especially those related with procedural law. This is why Police Investigators refuse to use the Sexual Violence Law.<sup>141</sup>

Also, based on information obtained from Mrs. Sri Hartati, S.H., M.H., who came from her colleagues who attended educational training related to the Law on Crimes of Sexual Violence, implementing regulations related to the Law on Crimes of Sexual Violence is indeed being drafted by the Ministry Women's Empowerment and Child Protection of the Republic of Indonesia.<sup>142</sup>

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<sup>141</sup> Interview with Mrs Siti Hartati, S.H., M.H., as Public Prosecutor at the Yogyakarta District Attorney, on Friday, June 9 2023.

<sup>142</sup> Interview with Mrs Siti Hartati, S.H., M.H., as Public Prosecutor at the Yogyakarta District Attorney, on Friday, June 9, 2023.



According to Mr. Tri Asnuri Herkutanto, S.H., M.H., as the Judge in Yogyakarta District Court, if there are no acts of sexual violence found in the content in the form of images or videos that contain intimate scenes, or in other words, intimate relationships that have occurred and are included in the content based on the consent or approval of both parties, it will be difficult to use Law Number 12 of 2022 on Sexual Violence Crime to resolve Online Gender Based Violence (OGBV) cases in the form of Non-Consensual Dissemination of Intimate Image (NCII). If the intimate relationship and the recording took place conscientiously or with consent, this case would be more inclined to use Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law).

Law enforcement authorities tend to favor the utilization of the Electronic Information and Transaction Law (ITE Law) and the Pornography Law in addressing cases of gender-based violence, specifically those involving Non-Consensual Dissemination of Intimate Images (NCII), rather than relying on the Law on Sexual Violence (TPKS Law). Undeniably, there are many reasons why Law No. 12 of 2022 on the Crime of Sexual Violence (UU TPKS) is considered more appropriate and comprehensive in ensuring victim protection.

Essentially, until now, cases related to gender-based violence in the online realm still cannot be accommodated by the existence of laws that specifically regulate this matter. Legal arrangements that can be used as rules

in providing protection to victims of gender-based violence in the online realm have not specifically regulated Online Gender-Based Violence (OGBV), especially in the form of Non-Consensual Dissemination of Intimate Images (NCII). Before the existence of Law Number 22 of 2022 on Sexual Violence Crime (TPKS Law), the rules regarding GBV were regulated in Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law) which states that, "Everyone intentionally and without rights distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that have content that violates decency."<sup>143</sup> However, as we know, this article only regulates perpetrators who distribute data electronically but do not address specific cases of Online Gender-Based Violence (OGBV).

The insufficient legal framework for safeguarding victims of Online Gender-Based Violence (OGBV) has led to the inadequacy of laws and regulations in addressing cases of Online Gender-Based Violence, particularly Non-Consensual Dissemination of Intimate Images (NCII). This condition has significantly impacted the provision of legal protection and access to justice. Instead of receiving the necessary support, a large number of OGBV victims, particularly those facing Non-Consensual Dissemination of Intimate Images,

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<sup>143</sup> Article 27 Paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

remain vulnerable to revictimization due to the provisions in Law Number 19 of 2016 amending Law Number 11 of 2008 on Information and Electronic Transactions (ITE Law), as well as Law Number 44 of 2008 on Pornography (Pornography Law).

In addition to determining what punishment can be given to perpetrators of Online Gender-Based Violence (GBV), the state is also obliged to protect victims of online gender-based violence, which is increasing yearly and a unique mechanism is needed.

The victims of online gender-based violence (GBV) often do not get support from their closest parties, such as family, to seek justice because they are considered to bring shame. Victims also often experience revictimization from law enforcement when they report the incident because there is still no definite mechanism related to the protection of victims of gender-based violence whose handling must be differentiated from ordinary crimes.

The negative stigma that is often given to victims and coupled with the difficult legal process and the victim's testimony being sidelined, are real actions that need to be resolved immediately.

We can conclude that before the existence of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), the arrangements related to the settlement of cases of Online Gender-Based Violence (KBGO), especially in the form of Non-Consensual Dissemination of Intimate Images (NCII) were still inadequate. This is reflected in the emergence of victims who

are often disadvantaged by the absence of a legal umbrella that specifically regulates Online Gender-Based Violence (GBV) and law enforcers who often do not side with victims.

A case occurred to a woman from Surabaya who was a victim of Online Gender-Based Violence (GBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) in 2020 due to jealousy and revenge carried out by her ex-boyfriend's affair, which even led to extortion and threats against the victim. However, when the victim wanted to file a report with the police, the report from the victim was rejected even before the BAP (Berita Acara Pemeriksaan) began, citing a lack of evidence. In fact, the police officer frightened the victim and advised her to settle the case within the family. Reflecting on this case, we can see that the state of the law and the law enforcement system in Indonesia, especially in cases of Online Gender-Based Violence (OGBV), is not fully satisfactory, and is not based on the perspective of the victim.<sup>144</sup>

This is what causes the urgency of using Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law), namely to improve previous regulations governing Online Gender-Based Violence (OGBV), especially in the form of Non-Consensual Dissemination of Intimate Images

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<sup>144</sup> Azza Fitrahul, and Muhammad Rifqi Hariri, "Legal Protection for Victims of Revenge Porn as a Form of Gender-Based Online Violence Judging from Law Number 12 of 2022 concerning Crimes of Sexual Violence", *Rewang Rancang: Journal of Lex Generalis Law*. Vol.3. No.7(July 2022) <https://jhlgr.wangrencang.com/>

(NCII) as a settlement of cases of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) in Indonesia.

In addition, in enforcing the law law enforcers should pay attention to the principle of *lex specialis derogat legi generalis*, this principle means that special rules override other rules that are general in nature. The principle of *lex specialis derogat legi generali* is one of the principles of preference in law that indicates which law takes precedence if a legal event is related to or violated by several regulations. Legislation that regulates the principle of *lex specialis derogat legi generali* is contained in Article 63 paragraph (2) of the Criminal Code, namely if an act is included in a general criminal regulation, it is also regulated in a special criminal regulation, then only the special one is applied. As the author has described above, it can be seen that the Law on Sexual Violence in regulating Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII) is more specialized and specific in nature than other laws.

As we know, using a law as a regulation in handling cases of Online Gender-Based Violence (OGBV), especially in the form of Non-Consensual Dissemination of Intimate Images (NCII), we need to know that this criminal act is regulated specifically and more comprehensively in protecting victims using Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence because this criminal act is a crime of sexual violence that occurs in the

electronic realm, where the act is included in the act of recording and / or taking sexually charged images against the will or consent of the person who is the object of the recording.

The Law Number 12 of 2022 on Sexual Violence Crime in detail confirms in Article 4 paragraph (1) of Law Number 12 of 2022 on Sexual Violence Crime, which reads, "the crime of sexual violence consists 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."<sup>145</sup>

Article 4 paragraph (2) of Law Number 12 of 2022 on Sexual Violence Crime also states that in addition to the types of sexual violence mentioned in Article 4 paragraph (1) of Law Number 12 of 2022 on Sexual Violence Crime, sexual violence crimes also include:

"Rape, obscene acts, intercourse with a child, obscene acts against a child, and/or sexual exploitation of a child, acts of violation of morality against the will of the victim, pornography involving children or pornography that explicitly contains sexual violence and exploitation, forced prostitution, criminal acts of trafficking in persons intended for sexual exploitation, sexual violence within the scope of the household, criminal acts of money laundering whose original criminal act is a Crime of Sexual Violence, and other criminal acts that are expressly stated as Crimes of Sexual Violence as stipulated in the provisions of laws and regulations."

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<sup>145</sup> Article 4 paragraph (1) of Law Number 12 of 2022 on Sexual Violence Crime.

From the types of sexual violence crimes regulated in Law Number 12 of 2022 on Sexual Violence Crime (TPKS Law), it can be seen that Law Number 12 of 2022 on Sexual Violence Crime (TPKS Law) also regulates the crime of Electronic Based Sexual Violence (KSBE). This electronic-based sexual violence is further explained in Article 14 of Law Number 12 of 2022 on Sexual Violence Crime (TPKS Law). It can be concluded that, the regulation of Online Gender-Based Violence (OGBV) in particular, in the form of Non-Consensual Dissemination of Intimate Images (NCII) is a crime of sexual violence committed through social media or online and can be categorized as one of the crimes of electronic-based sexual violence (KSBE).

Law No. 12 of 2022 on Sexual Violence Crime (TPKS Law) not only regulates in detail the types of sexual violence crimes but also regulates the qualifications of law enforcers who take part in handling the resolution of sexual violence cases.

According to the Law on the Crime of Sexual Violence (TPKS Law), in order to effectively manage cases involving sexual violence, law enforcement officials such as police investigators, public prosecutors, and judges must be well-versed on issues of gender and sexual violence. As mentioned in Article 21, paragraph (1) of the Law on Sexual Violence, “Investigators, public prosecutors, and judges handling cases of sexual violence crimes must meet the

following requirements:<sup>146</sup> a. have integrity and competence in handling cases from the perspective of human rights and victims, b. has attended training related to handling cases of crimes against sexual violence.” It is also explained in the following paragraph: "If there are no investigators, public prosecutors or judges who meet the requirements referred to in paragraph (1), cases of sexual violence crimes are handled by investigators, public prosecutors or judges who are experienced in handling sexual violence crimes based on a decision made by the authorized official."<sup>147</sup> As mentioned in Article 22 of the Law on Crime of Sexual Violence, it is also explained, "Investigators, public prosecutors, and judges conduct examinations of Witnesses/Victims/suspects/defendants while upholding human rights, honor, and dignity, without intimidation and not justifying mistakes, not victimizing the way of life and decency, including sexual experiences. With questions that are ensnaring or traumatizing to the victim or unrelated to the crime of sexual violence."<sup>148</sup>

The Law on Criminal Acts of Sexual Violence contains regulations regarding the training of law enforcement officials who will handle cases of criminal acts of sexual violence, which gives victims of sexual assault in the Sexual Violence Law more assurances that their cases of abuse will be resolved.

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<sup>146</sup> Article 21, paragraph (1) of Law Number 12 Year 2022 concerning Crimes of Sexual Violence.

<sup>147</sup> Article 21, paragraph (2) of Law Number 12 Year 2022 concerning Crimes of Sexual Violence.

<sup>148</sup> Article 22 of Law Number 12 Year 2022 concerning Crimes of Sexual Violence.



It is hoped that these requirements for law enforcement certification will prevent any further sexual assault victims from encountering unpleasant actions or being blamed by law enforcement authorities when reporting sexual violence they experienced.

The Law No. 12 of 2022 on Sexual Violence Crime (TPKS Law) also regulates evidence. The Article 184 of the Criminal Procedure Code states that valid evidences are the witness statements, expert statements, letters, instructions, and statements of the accused. "Legitimate tool of evidence in proving the Crime of Sexual Violence consists of; a. tool of evidence as referred to in the criminal procedural law; b. other tool of evidence in the form of electronic information and/or electronic documents as regulated in the provisions of laws and regulations; and c. evidence used to commit a crime or as a result of a crime of sexual violence and/or goods or items related to the crime."<sup>149</sup>

As we know, evidence and tool of evidence are 2 (two) different things.

This rule was created to make it easier for law enforcement officials to process alleged criminal acts of sexual violence. For example, the cases of rape, the perpetrator often does not admit or deny the actions he has committed. The evidence such as bed linen with the sperm of the perpetrator spilt can be used

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<sup>149</sup> Article 184 of the Criminal Procedure Code.

as legal evidence as stipulated in Article 24 paragraph (1), (2), and (3) of the Law on Violent Crimes sexual:<sup>150</sup>

"Valid '*alat bukti*' in proving the Crime of Sexual Violence consists of: a. '*alat bukti*' as referred to in the criminal procedural law, b. other '*alat bukti*' in the form of electronic information and/or electronic documents as stipulated in the provisions of laws and regulations, and c. '*alat bukti*' used to commit a criminal offense or as a result of a Crime of Sexual Violence and/or objects or items related to the crime. Including Witness testimony '*alat bukti*', namely the results of the examination of Witnesses and/or Victims at the investigation stage through electronic recording. Including letter '*alat bukti*', namely: a. certificate of clinical psychologist and/or psychiatrist/mental medicine specialist, b. medical records, c. forensic examination results, and/or d. bank account examination results."

In addition, based on Article 25, paragraph (1) of the Law on Sexual Violence, which reads: "The testimony of witnesses and/or victims is sufficient to prove that the defendant is guilty if it is accompanied by 1 (one) other valid tool of evidence and the judge obtains confidence that a crime has occurred and it is the defendant who is guilty of committing it."<sup>151</sup>

So, we know that the testimony of witnesses and/or victims accompanied by 1 (one) other valid evidence is sufficient to make a defendant guilty of committing an act of sexual violence.

From the arrangement of evidence in Law No. 12 of 2022 on Sexual Violence Crime, we can conclude that Law No. 12 of 2022 on Sexual Violence Crime, in handling cases of sexual violence, especially Online Gender-Based

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<sup>150</sup> Irfan Kamil, Wamenkumham: In the TPKS Bill, Evidence can be Evidence, <https://nasional.kompas.com/read/2022/02/22/18221601/wamenkumham-dalam-ruu-tpks-barangbukti-bisa-jadi-alat-bukti>, accessed on Tuesday, May, 9th 2023, at 22.46 WIB.

<sup>151</sup> Article 25, paragraph (1) of the Law on Sexual Violence.

Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII), is more victim-centered.

The Law No. 12 of 2022 on Criminal Acts of Sexual Violence also regulates restitution to victims. In the Sexual Violence Law, provisions regarding restitution and the rights of victims are contained in Articles 30 to 38 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

The Article 1 Point 20 of the Law on Sexual Violence, defines a restitution, the payment of compensation that is charged to the perpetrator or a third party based on a court decision or decision that has permanent legal force, for material and/or immaterial losses suffered by the victim or his heirs."<sup>152</sup> The victims get restitution and recovery services based on Article 30, paragraph (1), which reads, "Victims of Sexual Violence are entitled to Restitution and Recovery services."<sup>153</sup> Furthermore, the types of restitution are explained in Article 30 paragraph (2) of the Law on Sexual Violence, "Restitution, as referred to in paragraph (1), is in the form of;<sup>154</sup> compensation for loss of property or income, compensation for losses incurred as a result of suffering directly related to the crime of sexual violence, reimbursement of medical and/or psychological treatment costs, and/or compensation for other losses suffered by the Victim as a result of the Crime of Sexual Violence."

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<sup>152</sup> Article 1 Point 20 of the Law on Sexual Violence.

<sup>153</sup> Article 30, paragraph (1) of the Law on Sexual Violence.

<sup>154</sup> Article 30 paragraph (2) of the Law on Sexual Violence.

In addition, The investigators can confiscate the perpetrator's assets as collateral for restitution with permission from the local district court. This rule is explained in Article 31, paragraph (3) of the Law on Sexual Violence, which reads, "Investigators can confiscate the assets of perpetrators of sexual violence as collateral for restitution with the permission of the local district court."<sup>155</sup>

The restitution is given to the victim no later than 30 (thirty) days after the copy of the decision is received. Suppose the granting of restitution to the victim is not fulfilled correctly by that time limit, the court will immediately issue a warning letter to the restitution giver to fulfill his obligations to the victim or their heir. This rule is contained in Article 33, paragraphs (1), (3), and (4) of the Law on Sexual Violence.

Suppose the convict's obligation to provide restitution to the victim is not fulfilled, the court has the authority to order the prosecutor to auction off the confiscation of the restitution guarantee. Suppose the results of the auction exceed the specified amount of restitution, the excess proceeds from the auction results are returned to the convict. This rule is based on Article 33, paragraph (5) of the Law on Sexual Violence.<sup>156</sup>, which reads, "The judge in his decision ordered the prosecutor to auction off the confiscation of the Restitution guarantee as long as no payment of Restitution is made within 30 (thirty) days after the court decision which has obtained permanent legal force."

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<sup>155</sup> Article 31, paragraph (3) of the Law on Sexual Violence.

<sup>156</sup> Article 33, paragraph (5) of the Law on Sexual Violence.

Furthermore, it is explained in Article 33, paragraph (6) of the Law on Sexual Violence Crime<sup>157</sup>, which reads, "If the Restitution deposited as referred to in Article 31 paragraph (2) and the convict's assets auctioned as referred to in paragraph (5) exceeds the amount of Restitution decided or determined by the court, the prosecutor shall return the excess to the convict."

Suppose the convict's assets that have been confiscated are insufficient to pay restitution, the state will compensate for the nominal amount of underpaid restitution through the Victim Assistance Fund. The sources of funds from the Victim Assistance Fund are obtained from philanthropy, society, individuals, a company's social and environmental responsibility, and other legitimate sources.

The arrangements regarding restitution for victims of sexual violence, specifically regulated in the Law on Sexual Violence, are a form of accountability that can be given by perpetrators to victims who have suffered.

Furthermore, The Law Number 12 of 2022 on Sexual Violence Crime also regulates the rights of victims. In the Law on the Crime of Sexual Violence, victims' rights get strong legitimacy. This is based on Article 2 of Law Number 12 of 2022 on Sexual Violence Crime which read, "The regulation of the Crime of Sexual Violence is based on the principles of; respect for human dignity,

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<sup>157</sup> Article 33, paragraph (6) of the Law on Sexual Violence Crime.

nondiscrimination, the best interests of the Victim, justice, expediency, and legal certainty."<sup>158</sup>

In addition, Article 66 of Law Number 12 of 2022 on Sexual Violence Crime states:

"Victims are entitled to Handling, Protection, and Recovery since the occurrence of Criminal Acts of Sexual Violence, victims with Disabilities are entitled to accessibility and proper accommodation for the fulfillment of their rights in accordance with the provisions of laws and regulations, unless otherwise specified in this Law, further provisions regarding the procedures for Handling, Protection, and Recovery as referred to in paragraph (1) shall be regulated by Government Regulation."

Based on Article 66 of the Law on the Crime of Sexual Violence paragraph (1), we can conclude that Law Number 12 of 2022 on Sexual Violence Crime regulates the rights of victims, it is stated that the victim has the right to treatment, protection, and recovery from the time the crime of sexual violence occurred.

According to Article 67 of Law Number 12 of 2022 on Sexual Violence Crime stated, "(1) Victims' Rights include, the right to Handling, the right to Protection, and the right to Recovery. (2) The fulfillment of Victims' Rights is the obligation of the state and is carried out in accordance with the conditions and needs of the Victims." As we can see that, Article 67, paragraph (2) of the Law on the Crime of Sexual Violence, there is an affirmation that fulfilling the

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<sup>158</sup> Article 2 of Law Number 12 of 2022 on Sexual Violence Crime.

victims' rights is the state's obligation and is carried out following the needs and conditions of the victims.

Furthermore, Article 68 letter g of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence which reads, "the right to the removal of sexually charged content for cases of sexual violence with electronic media." From this article, we know that Law Number 12 of 2022 on the Crime of Sexual Violence for victims of sexual violence cases with electronic media such as Online Gender-Based Violence (OGBV) in particular, Non-Consensual Dissemination of Intimate Images (NCII), victims are entitled to the right to remove sexually charged content. This rule makes victims feel safe and calm because victims know that their content is no longer spread on social media.

Not only that, based on Article 69 letter e of the PKDRT Law, it is stated that, "Protection from the attitude and behavior of law enforcement officials who demean the Victim." Based on this article, victims are entitled to protection from the attitude and behavior of law enforcement officials who demean victims. Victims also receive protection from criminal prosecution or civil lawsuits for reported criminal acts of sexual violence, this is based on Article 69 letter g of the Law Number 12 of 2022 on Sexual Violence (TPKS Law), which reads, "Protection of victims and/or reporters from criminal prosecution or civil lawsuits for criminal acts of sexual violence that have been reported."

Based on the arrangements contained in Law No. 12 of 2022 on Sexual Violence Crime that have been described by the author, we can conclude that

Law No. 12 of 2022 on Sexual Violence Crime can provide protection, and regulate the resolution of cases of sexual violence, especially cases of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII), and also more appropriate because it is more victim-perspective.

With the existence of Law No. 12 of 2022 on Sexual Violence Crime, it is hoped that victims of sexual violence, especially victims of Online Gender-Based Violence (OGBV) in the form of Non-Consensual Dissemination of Intimate Images (NCII), will no longer feel threatened by potential laws and regulations that have the potential to criminalize victims, and can safely report cases of violence experienced to the Police.





## CHAPTER IV

### FINAL

#### A. Conclusions

Based on the discussion above, this research concludes as follows:

1. It is not appropriate to settle cases of Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Images using Electronic Information and Transactions Law (ITE Law), and Law Number 44 of 2008 concerning Pornography (Pornography Law) at Yogyakarta Special Region Police, because both are potential to criminalize victims, instead of protecting victims, and in the end the law fails to create a safe space for victims of OGBV, especially in the form of NCII. This makes the victim feel afraid to report the violence they experienced to the Police.
2. The establishment of Law No. 12 of 2022 on the Crime of Sexual Violence is expected to bring real change, especially in reducing, and even eliminating cases of Online Gender-Based Violence in Indonesia, especially against the crime of Non-Consensual Dissemination of Intimate Images. This is reflected in the provision of protection for victims in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence which is more comprehensive. That is why Law Number 12 of 2022 concerning Crimes of

Sexual Violence has an urgency to be used to resolves OGBV cases in the form of NCII.

## **B. Suggestions**

1. The Law enforcement officials should no longer use Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), and Law Number 44 of 2008 concerning Pornography (Pornography Law) to resolve cases of Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Images because both laws are considered inappropriate. Moreover, the law enforcement officials who take part in resolving the cases of OGBV, especially in the form of Non-Consensual Dissemination of Intimate Images, should have the qualifications to handle cases of sexual violence. Thus, it can help the victims of Online Gender-Base Violence to feel safe to report the violence they experienced.
2. Preferably, in resolving the cases of Online Gender-Based Violence in the form of Non-Consensual Dissemination of Intimate Images, the law enforcement officials use Law No. 12 of 2022 on the Crime of Sexual Violence, preferably the government needs to compile and enforce such as implementation instructions, and technical instructions from the institution, especially those related to the procedural law. Not only that, Law concerning Crime of Sexual Violence should also be immediately socialized

to related parties in order to create a comprehensive understanding of the substance regulated in Law No. 12 of 2022 on the Crime of Sexual Violence.

## BIBLIOGRAPHY

- Abadi, d. R. (2023, July Saturday). *PTSD (Post-Traumatic Stress Disorder)*. Retrieved from Halodoc: <https://www.halodoc.com/kesehatan/ptsd>
- Abidin, A. A. (2021). *Reorganizing Criminal Policy in Cyberspace (Study on the Implementation of ITE Law in Indonesia)*. Jakarta: Institute for Criminal Justice Reform (ICJR).
- Ali, H. Z. (2012). *Hukum Pidana Islam*. Jakarta: Sinar Grafika.
- Ali, H. Z. (2012). *Islamic Criminal Law*. Jakarta: Sinar Grafika.
- Amali, Z. (2020, December Wednesday). *Why GA, MYD & Other Victims of Pornography Should not be Criminalized*. Retrieved from tirto.id: <https://tirto.id/mengapa-ga-myd-korban-pornografi-lain-seharusnya-tak-dipidana-f8DM>
- Amalia, N. R. (2017). The Application of the Maqashid Sharia Concept to Islamic Political Identity Relations in Indonesia. *Dauliyah, Number 1, Volume 2*, 42.
- Anwar, Y. (2004). *Reaping Crime: A Sociocultural Approach to Criminology, Law and Human*. Bandung: UNPAD Press.
- Ardina, M. (2021). The Effect of Pornographic Views on Social Media on the Behavior of Sexual Harassment in Adolescents in Yogyakarta. *MEDIALOG: Journal of Communication Studies Volume IV, No. II*, 225.
- Arum, E. K. (2020). "Understanding and Responding to Online GenderBased Violence (A Guide)". *SAFEnet*.
- Atmasasmitha, R. (1992). *Theory & Capita Selektia Criminology*. Bandung: PT. Eresco.
- Azza Fitrahul, a. M. (2022). "Legal Protection for Victims of Revenge Porn as a Formof Gender-Based Online Violence Judging from Law Number 12 of 2022 concerning Crimes of Sexual Violence". *Rewang Rancang: Journal of Lex Generalis Law. Vol.3. No.7*.
- Budi, T. (2021, January Friday). *If this device is not found by the police, Gisel can be released from the film*. Retrieved from SIDONEWS.COM:

<https://metro.sindonews.com/read/294274/170/jika-perangkat-ini-tidak-ditemukan-polisi-gisel-bisa-lepas-dari-kasus-video-syur-1610089305>

- Chaplin, J. (2009). *Complete Dictionary of Psychology*. Jakarta: Rajawali Press.
- Citron, D. K. (2014). Criminalizing Revenge Porn. *Wake Forest Law Review*, Vol. 49, 346.
- Cooney, C. (2020, December Thursday). *HARSH JUSTICE Singer facing jail after her sex tape was stolen from her phone and leaked online in Indonesia*. Retrieved from THE SUN (UK Edition): <https://www.thesun.co.uk/news/13619643/singer-jail-sex-tape-stolen-phone-leaked-online-indonesia/>
- Dian, R. (2023, February Thursday). *11 Types of Online Gender-Based Violence (KBGO) whose Cases Continue to Increase*. Retrieved from Parapuan: <https://narasi.tv/read/narasi-daily/11-jenis-kekerasan-berbasis-gender-online-kbgo-yang-kasusnya-terus-mengalami-peningkatan>
- Dkk., S. A. (2021). "2021 Indonesia Digital Rights Situation Report; The Pandemic is. *Southeast Asia Freedom of Expression Network*. Retrieved from Southeast Asia Freedom of Expression Network.
- Dunn, S. (2020). "Technology-Facilitated Gender-Based Violence An Overview". Canada: Centre for International Governance Innovation.
- Gisela Rumuli Violin, a. Y. (2022). Protection of Online Gender-Based Violence Victims: A Feminist Legal Analysis. *The Indonesian Journal of Socio-Legal Studies*, Volume 1, Number 2, 9-10.
- Hany Areta A., H. C. (2021). "Escalation of Online Gender-Based Violence During the Pandemic: Study of Handling Pornography Cases". *Lex Renaissance Journal*, No. 4, Vol. 6, 2.
- Indonesia, C. W. (2022). Fact Sheet "Non-Consensual Dissemination of. *Cakra Wikara Indonesia*, 3. Retrieved from Cakra Wikara Indonesia.
- Irfan, A. W. (2001). *Protection of Victims of Sexual Violence: Advocacy for Women's Human Rights*. Bandung: Rafika Aditama.
- Irfan, A. W. (2001). *Protection of Victims of Sexual Violence: Advocacy for Women's Human Rights*. Bandung: Rafika Aditama.

- Kamil, I. (2022, February Tuesday). Retrieved from Kompas.com: <https://nasional.kompas.com/read/2022/02/22/18221601/wamenkumham-dalam-ruu-tpks-barangbukti-bisa-jadi-alat-bukti>
- Kansil, C. (2001). *Criminal Law Examination Training*. Jakarta: Sinar Grafika.
- Kansil, C. (2004). *Fundamentals of Criminal Law*. Jakarta: Pradnya Paramita.
- KBGO, A. (2022, April Tuesday). *Half-hearted Legal Protection for Victims of Electronic-Based Sexual Violence in the TPKS Law*. Retrieved from AWAS KBGO: <https://awaskbgo.id/2022/04/18/setengah-hati-perlindungan-hukum-korban-kekerasan-seksual-berbasis-elektronik-dalam-uu-tpks/>
- Lumbanrau, R. E. (2023, March Tuesday). *Online violence: Victims of Revenge Porn are Cursed, Strangled, and Spread Intimate Content 'I have tried to kill myself many times'*. Retrieved from BBC NEWS: <https://www.bbc.com/indonesia/indonesia-56629820>
- M. Rahmawati, a. N. (2022). "Far from the Fire; Looking at the Legal Framework for Gender-Based Violence Online in Indonesia". *SAFEnet*, 19.
- Maidina Rahmawati, N. S. (2022). Far from the Fire Looking at the Legal Framework. *SAFEnet*, 152 - 153. Retrieved from SAFEnet, KPPPA, ICJR, and UKA.id.
- Malya, P. (2021, October Thursday). *9 Types of Violence against Women on the Internet, One of which is Sexting*. Retrieved from Parapuan: <https://www.parapuan.co/read/532930269/9-jenis-kekerasan-pada-perempuan-di-internet-salah-satunya-sexting?page=all>
- Maryandi, Y. (2018). Pornography and Pornoaction (Historical Perspective and Islamic Law). *Journal of Islamic Civilization and Law, Volume 1, Number 1*, 32.
- Merdeka.com. (2023, July Saturday). *Understanding Depression According to Psychologists, Understand the Symptoms*. Retrieved from Merdeka.com: <https://www.merdeka.com/trending/pengertian-depresi-menurut-para-ahli-psikologi-pahami-gejalanya-klm.html>
- Munti, R. B. (2023, January Friday). "The Voice: A Number of Police Refuse to Use the TPKS Law, a Serious Challenge in Handling Victims". Retrieved from Konde.co : <https://www.konde.co/2023/01/the-voice-sejumlah-polisi-tolak-gunakan-uu-tpks-tantangan-berat-penanganan-korban-kekerasan-seksual.html/>
- Noviana, I. (2015). Sexual Violence Against Children: Its Impact and Handling. *Journal of Sosio Informa, Vol. 01, No. 1*, 18.

- Ratu, H. N. (2023, May Friday). *Associated with Rebecca Klopper Policing Accounts of Immoral Video Spreaders, What is NCII?* Retrieved from Detik Health: <https://health.detik.com/berita-detikhealth/d-6741194/dikaitkan-rebecca-klopper-polisikan-akun-penyebar-video-syur-apa-itu-ncii>
- Ritonga, Z. L. (2016). *Fundamentals of Jinayah Procedural Law*. Jakarta: Kencana Pramedia Group.
- Rohidin. (2016). *Introduction to Islamic Law (From the Arabian Peninsula to Indonesia)*. Bantul: Lintang Rasi Aksara Books.
- Santoso, T. (2016). *Principles of Islamic Criminal Law*. Jakarta: Sinar Grafika.
- Sepec, M. (2019). "Revenge Pornography or Non-Consensual Dissemination of Sexually Explicit Material as a Sexual Offence or as a Privacy Violation Offence.". *International Journal of Cyber Criminology (Diamond Open Access Journal)*. Retrieved from International Journal of.
- Sinombor, S. H. (2021, January Monday). *When the State Enters the Private Area*. Retrieved from Kompas.id: [https://www.kompas.id/baca/dikbud/2021/01/04/ketika-negara-masuk-ke-wilayah-pribadi?status=sukses\\_login&status\\_login=login](https://www.kompas.id/baca/dikbud/2021/01/04/ketika-negara-masuk-ke-wilayah-pribadi?status=sukses_login&status_login=login)
- Sugiyanto, O. (2021). "Women and Revenge Porn: Social Construction of Indonesian Women from a Victimological Perspective". *Journal of Women and Families, No. 1, Vol. 2, 1*.
- Suhartono, A. (2021, January Saturday). *Foreign media outlets The Sun and SCMP defend Gisel over her nude video, criticize anti-pornography law*. Retrieved from iNewsJabar.id: <https://jabar.inews.id/berita/media-asing-the-sun-dan-scmp-bela-gisel-terkait-video-syur-kritik-uu-antipornografi/all>
- Suprantikna, A. (1995). *Psychological Review of Interpersonal Communication*. Bandung: Remaja Rosdakarya.
- Surya, R. (2018). Classification of Hudud Crimes and Sanctions in the Perspective of Islamic Law. *Journal of Family Law and Islamic Law, Number 2, Volume 2, 532*.
- Syahrani, M. (2023, May Saturday). *GoodStats*. Retrieved from Number of Cases of Gender-Based Violence Online Decreasing: <https://goodstats.id/article/jumlah-kasus-kekerasan-berbasis-gender-online-tahun-2022-menurun-berapa-totalnya-3EFTc>

Syufiana, T. (2020, November Sunday). *Can Husbands and Wives Record Videos During Sex?* Retrieved from Republika: <https://www.republika.id/posts/11854/bolehkah-suami-istri-merekam-video-ketika-berhubungan>

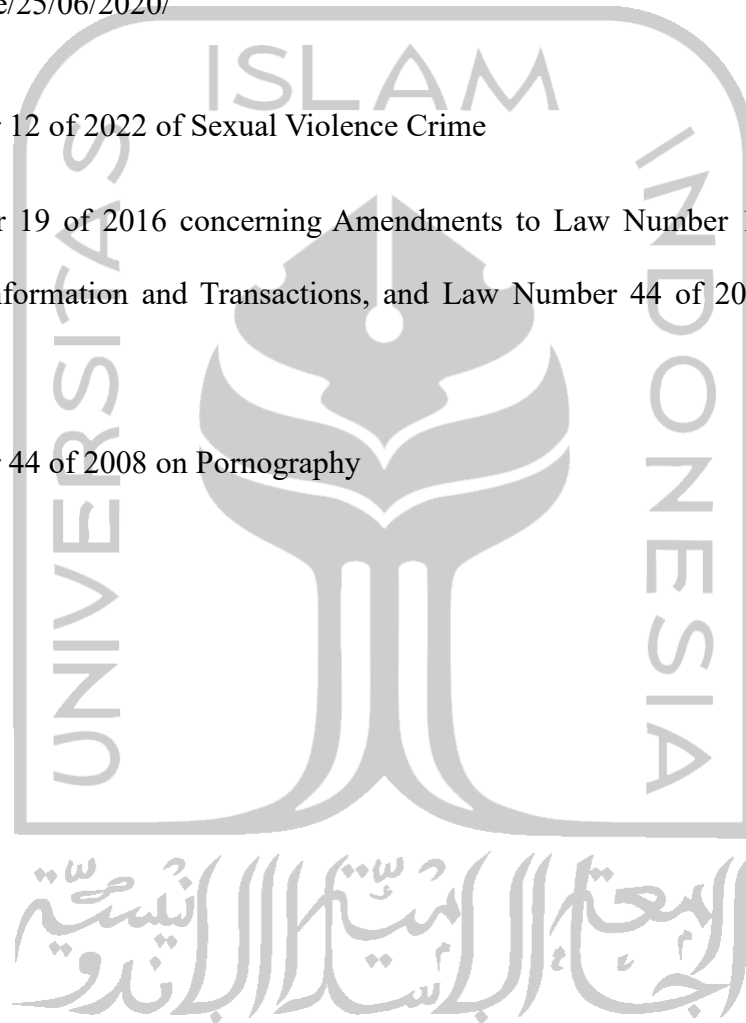
Wardhani, D. P. (2020, June Sunday). *“Online Gender-Based Violence”*. Retrieved from Modernis: <https://modernis.co/keKerasaan-berbasisgender-online/25/06/2020/>

### **Legal Basis**

Law Number 12 of 2022 of Sexual Violence Crime

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 on Electronic Information and Transactions, and Law Number 44 of 2008 concerning Pornography

Law Number 44 of 2008 on Pornography









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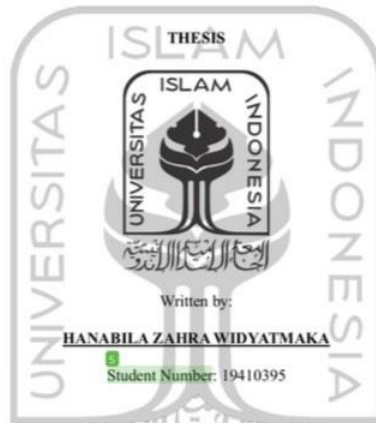
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