

Executive Summary

“Jauh Panggang dari Api”

**Falling Short of Expectations: Examining the Online Gender Based Violence
Legal Framework in Indonesia**

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Background

Online gender-based violence (OGBV) has become a global phenomenon in line with the development and increase in access to internet-based communication technology. In 2015, UN Women and the UN Broadband Commission quoted the Networked Intelligence for Development 2015 report, which stated that 73% of the world's women have experienced online violence. This trend has continued, for example in 2020, The Economist Intelligence Unit (EIU) stated that 38% of women reported that they had experienced online violence, while 65% of women said that they knew other women who were victims of online violence. This report also stated that young people are more likely to experience online violence.

Meanwhile in Indonesia, the 2020 Annual Report (*Catatan Akhir Tahun/Catahu*) from Komnas Perempuan (Indonesia's National Commission on Violence against Women) found that there had been an increase in OGBV cases, on which the Commission first reported in their 2018 Annual Report. In 2018, Komnas Perempuan documented 97 cases of OGBV; in 2019, the number increased to 281 cases; and in 2020, a total of 940 OGBV cases were recorded. The same trend was found in reports from GBV service providers to Komnas Perempuan, which reported 126 OGBV cases in 2019 and 510 OGBV cases in 2020.

This increase in OGBV cases, seen both globally and nationally, indicates the urgency of the problem. OGBV has become an issue that requires immediate attention because using digital and online technologies have become everyday necessities in economic, social, and political spheres. As a result, the threat of OGBV against women has become an obstacle for advancing and upholding women's rights.

The trend towards increasing rates of OGBV is happening globally, including in Indonesia. In additions to the findings of Komnas Perempuan's 2018-2020 Annual Reports, the same pattern can be seen in LBH Apik's documentation of OGBV cases the legal aid body handled. The report found that from the 489 OGBV cases identified, just 25 cases were reported to the police and only two cases made it to court. This situation shows that one of the main challenges for handling OGBV cases in Indonesia is the lack or insufficiency of regulations capable of resolving OGBV, especially with regards to providing protection of OGBV victims.

The data presented in reports from Komnas Perempuan and LBH Apik on the OGBV situation indicates the limitations of the Indonesian legal framework in protecting victims and providing access to justice. One of the reasons behind the low level of OGBV cases reported to the police is victims' concerns about being reported themselves. This worry emerges due to fear of prosecution under laws such as the Electronic Transactions and Information Law (UU ITE) and the Pornography Law (UU Pornografi), especially if the victim was involved in the creation of digital intimate content.

Instead of obtaining justice, victims in fact are vulnerable to revictimization. One well-known Indonesian case of revictimization is that of Baiq Nuril, who, in 2018 through decision number 574K/Pid.Sus/2018, was prosecuted under UU ITE. Meanwhile, a different OGBV case – which involved sexually explicit digital content being shared without the consent of the victim – in fact saw the victim criminalized under regulations within the Pornography Law.

Legal procedural barriers in processing OGBV cases are a key indicator of the weakness of Indonesia's legal framework in providing protection for victims. Several challenges faced when pushing legal processes in OGBV cases include: difficulties in obtaining evidence, jurisdictional issues that are different to conventional criminal acts, limited experts with

understanding of OGBV, limited availability of digital forensic technology, technical elements of trials, and the continuing poor perspective of law enforcement officials on OGBV.

A legal framework on OGBV is a key requirement for its prevention as well as victim protection. However, no sufficient framework exists in Indonesia thus far. A step to push for and improve OGBV prevention and victim protection, this research examines how the existing legal framework can and does respond to OGBV.

Findings

Examination of Indonesia's current regulations shows that the country does not yet have a legal framework that specifically regulates the punishment, handling, and preventing of OGBV. This conclusion emerged based on several important findings, including the lack of a clear definition of OGBV, weak regulations on the rights of OGBV victims, and other legal gaps.

The definition of OGBV as a form of GBV that is exacerbated, either in part or in whole, by using information and communication technology (ICT), such as mobile phones, the internet, media social platforms, and email, is not recognized by the legal system in Indonesia. In fact, the existing legal framework does not have a definition of gender-based violence itself.

This lack of definition on OGBV within the legal framework is not only an Indonesian problem. This is understandable, because OGBV as a concept is a fairly new phenomenon that is continuing to develop, both in Indonesia and around the world.

Legal frameworks about OGBV are also unknown in other countries. For example, the European Union does not yet have a particular convention that specifically regulates OGBV, with regulations instead contained in several different conventions and directives, such as the Istanbul Convention, Victims' Rights Directives, Directive on E-Commerce, and Audio Visual Media Service Directive. As of 2021, only Romania possessed a regulation on the different forms of OGBV, with Law No. 106/2020 on the Amendment to the 2003 Law on Domestic Violence, which prohibits several forms of OGBV, including online harassment, gender-based hate speech, online stalking, online threats, the publication of information and graphic content without consent, and online communication tapping.

Meanwhile in the United Kingdom, there is no specific regulation on online violence against women. However, the country does have several regulations relating to the prevention and handling of OGBV cases, including regarding victim protection. The UK is currently also drafting a comprehensive legal framework for OGBV, called the Online Safety Bill, a bill which will regulate issues relating to the safety of internet users, including on the responsibility of service providers.

In the Arab world, even legal frameworks on sexual harassment are limited, let alone on OGBV. Regulations that specifically prohibit online sexual harassment in the Arab world only exist in three countries so far: Egypt, Saudi Arabia, and Morocco.

In the Asia-Pacific region, several countries such as India, Pakistan, the Philippines, and South Korea are focusing on regulations that prohibit certain acts. However, the responses being drafted only use broad lenses when it comes to cyber violence, and do not specifically target the problem of OGBV.

Meanwhile, since January 2022, Australia has had an Online Safety Act 2021, which regulates several forms of OGBV and provides authority to the eSafety Commissioner to take both formal and informal action on OGBV.

As emphasized by the Special Rapporteur on Violence against Women, Its Causes and Its Consequences, in a report on online violence against women and girls from a human rights perspective, the high levels of OGBV confirm the need for legal reform. However, responses from individual countries have varied: some are adopting specific legal provisions, while others are improving existing legal frameworks. Legal frameworks most often used to respond to OGBV include laws about the cyber sphere, criminal law, domestic violence, hate speech, and laws on the protection of personal data.

As mentioned, the Indonesian legal framework does not specifically outline the forms of OGBV as prohibited actions. However, Indonesia does have several legal provisions that can be used in prosecuting perpetrators of OGBV and protecting victims. These include the Criminal Code, the Electronic Transactions and Information Law (UU ITE) and its derivative laws, the Pornography Law, the Child Protection Law, the Law on the Eradication of the Crime of Trafficking in Persons, Supreme Court Regulation No. 3/2017, Prosecutors' Guide no. 1/2021, and the 2007 Decision of the Head of the Supreme Court of the Republic of Indonesia number 144/KMA/SK/VIII/2007. These regulations can actually be used to take action on a variety of forms of OGBV as well as to protect OGBV victims, even though they were not originally developed in the context of OGBV.

In the Criminal Code, UU ITE, and the Pornography Law, the prohibitions of acts are oriented towards violations of morality, where what is protected is the public morality, not someone's bodily integrity or personal data. As a result, regulated prohibitions only focus on content (for example, whether something goes against morality), without paying attention to how that content was obtained. This puts victims in a vulnerable position. For example, if the victim was involved in content that has been distributed, the victim's lack of consent in said distribution does not place them as a 'victim' but rather as a 'perpetrator' who has spread content which violates values of decency and morality.

Provisions within the legal framework that are oriented towards morality and the protection of public morality tend to discriminate against the bodies of women or sexual minorities who are often considered as 'violating decency'. Consequently, existing regulations in fact expose victims to the fact that policies in Indonesia do not yet fulfill their responsibility to investigate and revoke legal provisions that were discriminatorily formulated, or that have an impact on discrimination against women and sexual minorities.

Therefore, we can conclude that the aspects of protection and handling of OGBV victims in Indonesia's legal framework remain limited, and protection for victims of violence is regulated in general for all kinds of violence, with no specific regulations for OGBV.

In addition to state instruments, we must also pay attention to the responsibilities of the private sector, including internet companies and electronic system providers. The government must regulate so that the private sector has internet safety and equality guidelines and terms of service or community regulations that are in line with anti-OGBV human rights perspectives, as well as requiring the private sector to provide an effective complaint system, to erase or block content or remove access to illegal content on their platforms, and have effective content moderation schemes. Unfortunately, regulations on the private sector remain limited, as to those relating to complaint systems and content removal mechanisms that are oriented towards prohibition in line with regulations that use perspectives of public decency and morality.

Recommendations

Based on these findings and conclusions, this research makes several recommendations as follows.

1. The first step that must be taken is that the government and the House of Representatives revoke regulations that are discriminatory, were not developed based on human rights principles, and have a disproportionate impact on women and gender minorities. Some of these regulations are:
 - a) Article 27 clause (1) of UU ITE, which needs to be designed in line with the concept of 'consent' based on principles of the right to bodily authority.
 - b) All provisions in the Pornography Law, which must be improved to ensure that pornography is prohibited not based on protecting social morality norms but on principles of the right to bodily integrity and personal data.
2. Steps to improve the Indonesian legal framework must be taken alongside efforts to raise awareness and build attitudes that do not tolerate OGBV. Prevention can be done through building public awareness on OGBV, including in the education sector, for the public, young people, and law enforcement officials.
3. The legal framework must also regulate case management and protection that is specific to OGBV victims, including, among others:
 - a) Provision of rights to individuals to request the removal of information and personal data from the internet.
 - b) A system in which OGBV victims can request the imposition of sanctions or interventions against perpetrators who distribute content without consent as well as service providers who carry said content.
 - c) Provision of counselling services as well as search features and contact details or platforms, websites, and blogs, in order to erase and remove image-based content reported by victims.
 - d) Provision of a public information system about service providers' compliance with measures to prevent and handle OGBV.
4. The legal framework must also regulate the private sector's responsibilities, including, among others:
 - a) Possessing internet safety and equality guidelines.
 - b) Possessing terms of service or community regulations, that are in line with anti-OGBV human rights perspectives.
 - c) Providing effective complaint systems and erasing or blocking content or removing access to illegal content on their platforms.
 - d) Possessing effective content moderation schemes.