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## Protection of Online Gender-Based Violence Victims: A Feminist Legal Analysis

Gisela Rumuli Violin<sup>1</sup> & Yvonne Kezia D. Nafi<sup>2</sup>

### Abstract

*The COVID-19 pandemic has led to a rise in cases of online gender-based violence (OGBV). However, this issue has not yet received attention in the realm of Indonesian law, especially when it comes to protecting the rights of the victims. This paper examines how the current legal framework in Indonesia handles OGBV cases and whether it is sufficient to provide protection for victims. Through the elaboration of several examples of cases that are widely discussed in Indonesian society, this paper will show how the legal process following OGBV is often detrimental to women. There is a correlation between the strong patriarchal culture; and the lack of understanding by the community and law enforcement officers on the concept of consent. This corners women as victims of OGBV leading to the secondary victimization process. The research applied a feminist legal method that focuses on the experiences of women as OGBV victims and hopes to contribute to the formulation of a legal umbrella and legal system with a more victim perspective in Indonesia.*

**Keywords:** *gender-based violence, gender-based violence online, protecting the victim, feminist legal theory, feminist legal method.*

### Abstrak

Pandemi COVID-19, ternyata telah menyebabkan meningkatnya kasus kekerasan seksual terutama yang berbasis gender *online* (KBGO). Namun permasalahan ini masih juga belum mendapatkan perhatian dalam ranah hukum Indonesia, khususnya terkait perlindungan hak-hak korban. Makalah ini bertujuan melihat bagaimana kerangka hukum Indonesia saat ini diterapkan dalam penanganan kasus-kasus KBGO dan seberapa jauh sudah memberikan perlindungan terhadap korban. Makalah ini juga menunjukkan bahwa praktik KBGO seringkali merugikan perempuan melalui elaborasi beberapa contoh kasus. Kelindan antara kentalnya budaya patriarkis; dan ketidakpahaman masyarakat dan aparat penegak hukum akan konsep ‘*consent*’ senantiasa memojokkan perempuan sebagai korban KBGO, dan berujung pada proses re-viktimisasi. Penelitian dilakukan dengan menggunakan *feminist legal method* yang menitikberatkan pengalaman perempuan sebagai korban, untuk mendorong penyusunan payung hukum dan sistem hukum yang lebih berperspektif korban.

**Kata kunci:** *kekerasan berbasis gender, kekerasan berbasis gender online, perlindungan korban, teori hukum feminis, metode hukum feminis.*

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## I. Introduction

The topic of Gender-Based Violence (hereinafter abbreviated as GBV) is not a novelty in the discussion of law enforcement in Indonesia. The debate on GBV flares up every time that GBV appears in a new form. The most recent form of GBV emerged from cyberspace, namely Online Gender-Based Violence, or *Kekerasan Berbasis Gender Online* in Bahasa Indonesia (hereinafter abbreviated as OGBV). The OGBV phenomenon has become a burning issue in Indonesia because of the COVID-19 pandemic which required people around the world and specifically in Indonesia, to stay at home for prolonged periods of time. These conditions of working and learning from home created circumstances in which a boom in OGBV could take place, due to the increased intensity of internet use, without a specific regulation on OGBV being put in place.

GBV practices can happen to anyone regardless of their gender and sex backgrounds, but the field data clearly shows that most victims are women. Every year, the National Commission on Violence Against Women/*Komisi Nasional Anti Kekerasan Terhadap Perempuan* (hereinafter abbreviated as Komnas Perempuan) compiles their Annual Notes of the National Commission on Violence Against Women report (hereinafter abbreviated as CATAHU Komnas Perempuan). The CATAHU Komnas Perempuan report of 6 March 2020 indicates that 2019 was the year with the largest increase in GBV cases. The report's findings are:<sup>3</sup>

- 1) The increase in GBV actions experienced by women was up to 800% over the last 12 years – this was the number of reported cases submitted to Komnas Perempuan, yet to include of those who are not reported; and
- 2) An increase of 300% OGBV cases from 2018 was related to the cybercrime reports involving threats and the distribution of pornographic contents (such as photos and videos) of OGBV victims.

The CATAHU Komnas Perempuan of 5 March 2021 shows that there was a decrease in the number of reported GBV cases in 2020, mostly due to the pandemic where data collecting process itself had to be done online, causing a decrease in the number of respondents of more than 100%. Meanwhile, there was a 60% increase in the number of direct complaints to Komnas Perempuan from 1,413 cases in 2019 to 2,389 cases in 2020.

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<sup>3</sup> National Commission Against Violence Against Women, "Annual Record of Violence against Women 2019 Increased Violence: Policies for the Elimination of Sexual Violence to Build Safe Spaces for Women and Children", <https://komnasperempuan.go.id/pengumuman-detail/siaran-pers-dan-fact-sheet-komnas-women-cata>, accessed 22 January 2021.



The increase was especially large in the category of OGBV cases, from 126 cases in 2019 to 510 cases in 2020, and mostly classified as psychological violence cases.<sup>4</sup> It must be underlined that these numbers are only based on reported cases from the victims and exclude many other victims who did not report. In 2021, the Legal Aid Institute (LBH) APIK Jakarta also reported a steep rise in OGBV cases to 489 cases – a significant increase from 2019 (17 reports) and 2020 (307 reports).<sup>5</sup>

The data above shows that within three years, OGBV has emerged as a new form of GBV in Indonesia. OGBV can be defined as an act of attack against someone's bodily integrity and self-autonomy regarding sexuality, and gender identity, which is carried out with digital technological means (Lidwina Inge Nurtjahyo, 2020). Women are most vulnerable to become victims of OGBV with a percentage reaching 71% of 659 cases recorded throughout 2020 from women victims.<sup>6</sup> According to the Association for Progressive Communications<sup>7</sup>, there are 3 (three) types of people who are prone to becoming victims of OGBV, namely persons who have been involved in intimate relationships; public figures; and the victims and survivors of GBV or OGBV (Ellen Kusuma and Nenden Sekar Arum from SAFEnet 2019, 8). Many victims of OGBV reported that their cases started from threats to disseminate the contents – photos or videos of the victims – into technology-based platforms, such as social media.<sup>8</sup> This practice clearly has a negative impact on women victims once they have been exposed. The shameful experience has made society perceived them in negative ways, both in real life and virtual world. As an individual, the victim will be more vulnerable to psychological loss, social isolation, economic loss, limited mobility, and self-censorship as a form of

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<sup>4</sup> National Commission Against Violence Against Women, "Annual Record of Violence against Women 2020 Women in the Hump of a Pandemic: Rise in Sexual Violence, Cyber Violence, Child Marriage, and Limited Handling Amid COVID-19", <https://komnasperempuan.go.id/siaran-pers-details/catahu-2020-komnasperempuan-fact-sheets-dan-poin-key-5-march-2021>, accessed 10 March 2021.

<sup>5</sup> Liberty Jimedu, "Online Gender-Based Violence Most Reported to LBH Apik Jakarta", <https://www.voice.com/tekno/2021/12/11/205853/kerasan-berbasis-gender-online-most-many-reported-ke-lbh-apik-jakarta>, accessed 12 January 2022.

<sup>6</sup> Safenet Voice, "[Press Release] Increase in Online Gender-Based Violence during the Pandemic," <https://id.safenet.or.id/2020/12/rilis-pers-peningkatan-kerasan-berbasis-gender-online-during-pandemic/>, accessed 21 January 2021.

<sup>7</sup> Association for Progressive Communications (APC) was founded in 1990. It is a global network of civil society organizations with the vision to use and shape the internet and digital technologies to equitable and sustainable future, leading to greater care for ourselves, each other, and the earth. More info on the association can be found in: <https://www.apc.org/en/about>.

<sup>8</sup> Komnas Perempuan, "Annual Record of Violence against Women 2019 Increased Violence: Policies on the Elimination of Sexual Violence to Build Safe Spaces for Women and Children", <https://komnasperempuan.go.id/pengumuman-detail/siaran-pers-dan-lembar-fact-komnas-women-cata>, accessed 22 January 2021.



protection so as not to become more victimized (Ellen Kusuma and Nenden Sekar Arum from SAFEnet 2019, 10). The practice of OGBV also is both a symptom of and perpetuates a misogynistic and sexist culture online which further reproduces the condition of inequality between women and men. The surge in reported numbers of OGBV, raises further questions regarding the implementation of the State's duty to protect women and the extent to which Indonesian law has guaranteed a sense of security for women, especially in the virtual realm.

This research therefore looks at the substance of current Indonesian law and whether it provides adequate protection for potential victims of GBV, specifically OGBV. The authors subsequently analyze OGBV cases to examine the application of existing Indonesian law and the protection this application offers to victims. By focusing on the experiences of women, this study uses the Feminist Legal Method to gain more comprehensive understanding concerning the protection of OGBV victims within the scope of Indonesian law. This research is based on a combination of a desk study, in which legal sources, and literature on the subject of OGBV in Indonesia were analyzed, with field research in which interviews with OGBV victims and paralegals were conducted. The authors hope that this article will be an insightful critique of the existing legal framework regarding OGBV and will contribute to future OGBV policies that will provide better online protections with a proper victim's perspective.

## II. OGBV case in Indonesia

The discourse of GBV has a long history, where the discussion is closely related to issues of human rights, women rights, and gender equality. GBV is mentioned in the General Recommendation of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Article 19 Point 1 which reads:<sup>9</sup>

*“Gender-based violence is a form of discrimination that seriously impedes women's ability to enjoy rights and freedoms on an equal basis with men.”*

A reference to GBV is also stipulated in the General Recommendation on Violence Against Women through its results on the 11th session in 1992 by the Committee on the Elimination of Discrimination Against Women, where Article 1 stipulates as follows:<sup>10</sup>

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<sup>9</sup> United Nations, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, paragraph 1.

<sup>10</sup> United Nations, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, paragraph 1.



*“Gender-based violence is that type of violence that is directed against a woman because she is a woman or it affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.”<sup>11</sup>*

The convention was ratified by Indonesia through Law No. 7 of 1984 concerning the Ratification of CEDAW.

The main cause of the emergence of GBV practices is the existence of an unequal relationship between women and men in which men have power over women. In Indonesian law, the existence of unequal power relations was recognized by Supreme Court Regulation No. 3 of 2017 on Guidelines for the Adjudication of Cases in which Women Face the Law. The Guidelines recognizes the existence of asymmetrical power relations causing inequality/dependence in social status, culture, knowledge/education, and economy, which creates a sense of power of one party over another in the context of inter-gender relations and detriment for those with a lower position.<sup>12</sup>

The need for the Supreme Court Regulation must be seen in the light of the patriarchal values that are ingrained within Indonesian society. It indicates that within the Supreme Court a view has emerged that opposes a patriarchal culture that exacerbates the position of the oppressed by taking sides with those who already have more power. According to Simone de Beauvoir in her literature entitled "The Second Sex", men are referred to as *the Self*, while women are called *the Other*. The Other is conceived as a threat to the Self so that if the Self wants to be free, then it must subordinate the Other to itself (Simone De Beauvoir 2011, 209-223).

Departing from that feminist understanding of unequal power relations between men and women, OGBV is defined as an act of attack against a person's body, sexuality, and gender identity which is carried out on a platform based on digital technology.<sup>13</sup> It should also be noted that the acts of GBV and OGBV both comprise harassment of the victim because of their gender background, but that OGBV is carried out through technological media (Ellen Kusuma and Nenden Sekar Arum, 2019, 4). In 2017, Komnas Perempuan summarized eight forms of OGBV, including approaches to deceiving (cyber

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<sup>11</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence Against Women, 1992, <https://www.refworld.org/docid/52d920c54.html>, accessed February 23, 2021.

<sup>12</sup> Indonesia, Supreme Court Regulation on Guidelines for adjudicating Women's Cases in Conflict with the Law, PERMA No. 3 of 2017, Ps. 1 number 9.

<sup>13</sup> Lidwina Inge N., "<https://theconversation.com/sexual-violence-in-the-internet-increasing-during-pandemic-dan-sasar-anak-muda-kenali-form-and-what-is-can-do-152230> , accessed January 20, 2021.



grooming), cyber harassment, hacking, sharing illegal content, infringement of privacy, the threat to distribute personal content in the form of videos/photos of the victims without consent (malicious distribution), online defamation, and online recruitment. The Internet Government Forum adds other forms of OGBV, including stalking, depiction, sexual harassment, defamation, hate speech and exploitation, as well as other forms of victims' experiences that involves a combination of physical, sexual, and psychological abuse, in or outside the cyberspace. The European Institute for Gender Equality categorizes OGBV into different forms of cyber harassment, such as non-consensual pornography (commonly known as revenge porn<sup>14</sup> or sextortion), cyberstalking, gender-based sexual harassment, slut-shaming, unsolicited pornography, doxing, electronically enabled trafficking, to death threats or even online rape.<sup>15</sup>

One specific form of OGBV, *Non-Consensual Spread of Intimate Images* (hereinafter abbreviated NCII), is especially prevalent. NCII itself is a term that refers to dissemination of contents (photos or videos) that are 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 images (deepfake system/effect) (Miha Sepec, 2019). This form of OGBV can be seen in several cases involving public figures with initials AP, LM, and CT which occurred in 2010; also, GA and MYD case in 2020, as described in the section below:

#### ***AP, LM, and CT Case (2010)***

The first case occurred in 2010 involving public figures with initials AP (man), LM (woman), and CT (woman). The brief chronology of this case dates back to 2006, when AP gave his favorite editor named 'Rejoy' an external hard drive to edit his band's music video which was done on a studio located in Capung, Bandung. While accessing the videos, 'Rejoy' found a video containing sexual relations between AP and CT, as well as another video with LM which then he

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<sup>14</sup> The terminology of "Revenge Porn" is problematic because the nuance of victim blaming. The "revenge" word is understood as an inflict hurt or harm for a wrong done, and so it implies that the victims deserve it because they have done something wrong. Although this writing does not provide an elaborate discussion on this issue, this article decided to use the terminology of NCII, which considered as the correct terminology.

<sup>15</sup> EuroMed Rights, EuroMed Droits, "Online Violence Against Women and Girls", [https://euromedrights.org/wp-content/uploads/2021/05/RAPPORT\\_GB\\_V\\_EXECUTIVE\\_SUMMARY.pdf](https://euromedrights.org/wp-content/uploads/2021/05/RAPPORT_GB_V_EXECUTIVE_SUMMARY.pdf), accessed 21 January 2022.





copied without asking AP for permission. The video was published online by 'Rejoy', even though AP had asked him to delete it. Subsequently, this case received nation-wide media attention. Rejoy was legally charged with combination of layered alternatives, *first* Article 29 of Law No. 44 of 2008 on Pornography (Pornography Law) *jo.* Article 56 Paragraph (2) of Criminal Code (primary indictment), and Article 32 of Pornography Law *jo.* Article 56 Paragraph (2) of Criminal Code (subsidiary charge); *second* Article 30 Paragraph (2) *jo.* Article 46 Paragraph (2) of Law No. 11 of 2008 concerning Information and Electronic Transactions (ITE Law) (primary indictment) and Article 27 Paragraph (1) *jo.* Article 45 Paragraph (1) ITE Law *jo.* Article 56 Paragraph (2) of Criminal Code or Article 282 Paragraph (1) of Criminal Code *jo.* Article 56 Paragraph (2) of Criminal Code (subsidiary charge).<sup>16</sup> By looking at charges above, the perspective of the Public Prosecutor becomes clear. Article 30 Paragraph (2) of KUHP (2) *jo.* Article 46 Paragraph (2) of ITE Law concern parties who intentionally access other people's computers or electronic systems with the aim of obtaining information or electronic documents without the owner's permission. The Prosecutor chose to charge Rejoy with hacking instead of focusing on the act of distributing pornographic videos to the public.<sup>17</sup> The Public Prosecutor did not show sufficient understanding that the main issue of the case was not about hacking but about illegal distribution of sexual material belonging to others, which was taken from the owner without consent. Rejoy had not been hacking someone's electronic systems and/or documents without permission – only the distribution of sexual materials was done without permission.<sup>18</sup> The Public Prosecutor's showed no concern whatsoever for privacy rights of the three public figures and the fact that they had not given permission for the video distribution. They only focused on the pornographic content that tarnishes nation's morale, thus stripping away the protection that should have been given to AP, LM, and CT as victims of OGBV practice.<sup>19</sup>

Rejoy was finally sentenced as being the main person who was responsible for the circulation of the video. However, at the appeal stage, the legal consideration

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<sup>16</sup> Bandung High Court, "Decision Number 68/Pid/2011/PT.BDG", p. 2-16.

<sup>17</sup> Indonesia, Law on Information and Electronic Transactions, Law no. 11

<sup>18</sup> Kominfo, "Menkominfo Affirms Site Hackers Break the Law", [https://kominfo.go.id/content/detail/3461/menkominfo-asserkan-peretas-site-melanggar-Hukum/0/berita\\_satker](https://kominfo.go.id/content/detail/3461/menkominfo-asserkan-peretas-site-melanggar-Hukum/0/berita_satker), accessed 24 June 2021.

<sup>19</sup> Bandung High Court, "Decision Number 68/Pid/2011/PT.BDG", p. 2-16.





of the Bandung High Court demonstrates how the Panel of Judges failed to consider the question of permission for the distribution of the video, as well as the violation of the victims' privacy rights which inflicted harm to the victims. The High Court of Bandung mostly repeated the considerations of the Panel of Judges of the Bandung District Court.<sup>20</sup> In addition, they stated that distributing pornographic content caused national unrest and therefore had damaged the nation's morale. The High Court did not look at the damage inflicted by Rejoice on the victims. CT and LM, as women public figures personally and professionally experienced real harm and damage since their reputation was shattered by the circulation of the video. The considerations of the judges at the first-instance and appeal levels demonstrate that there are no legal benchmarks that requires prosecutors and judges to focus on victims' protection related to harm and damages inflicted on victims by the distribution of explicit video content instead of the "national unrest that can disturb the public and tarnish the nation's morality".<sup>21</sup>

CT and LM were in an unfavorable position simply because they are women who culturally are expected to control their sexuality. They were 'easy' targets for Indonesian citizens and the online community who blamed and shamed them, meaning that they were the ones who had to make a public apology to their families and communities regarding their inappropriate behaviour. To make matters worse they both (together with AP as the male party) were charged with violation of Article 282 of KUHP on 8 July 2010.<sup>22</sup> CT and LM's even contested their continued status as suspects in a pre-trial hearing through their legal representatives, the Indonesian Law Enforcement and Oversight Agency (LP3HI) in June 2018. However, their plead for a dismissal of the case was rejected by the South Jakarta District Court on 7 August 2018.<sup>23</sup> After approximately eight years of investigation since this case began, CT and LM's status as suspects was maintained, making these two women living in uncertainty until today (2022).<sup>24</sup> AP, as the male person in

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<sup>20</sup> Ibid, p. 18.

<sup>21</sup> Ibid, p. 19.

<sup>22</sup> detikNews , Ariel, Luna Maya and Cut Tari are asked to apologize and say 'Don't be imitated', <https://news.detik.com/berita/d-1377015/ariel-luna-maya-dan-cut-tari-diminta-apologize-and-say-don-t-copy>, accessed June 24, 2021 .

<sup>23</sup> Hestana Dharmastuti, "This is the Journey of the Ariel-Cut Tari-Luna Porn Video Case for 8 Years", <https://news.detik.com/berita/d-4148410/ini-perjalanan-kas-video-porno-ariel-cut-dance-luna-for-8-years>, accessed June 25, 2021.

<sup>24</sup> Martahan Sohuturon, "The Fate of the Status of the Suspect Luna Maya and Cut Tari Diketok Judge," <https://www.cnnindonesia.com/nasional/20180807074305-12-320088/nasib-status-tersangka-luna-maya-dan-cut-tari- clicked by the judge>, accessed June 25, 2021. The pretrial lawsuit by the Indonesian Law



the circulated explicit content, was neither subjected to the same shaming and blaming nor under pressure from the public to make a public apology. However, he too, faced criminal charges. The difference is that the legal process of AP took only one year. AP received a prison sentence of 3.5 years, a fine of IDR 250,000,000.00 in July 2011, after having been detained since the start of the case around June 2010.<sup>25</sup> This unequal treatment of male and women victims after publication of private explicit content by a third party, illustrate gender inequality within Indonesia's patriarchal culture. Women are required to apologize in advance for their 'bad' actions and suffer from legal uncertainty because of their prolonged status as suspects. While AP, as the male party, was immediately arrested and put on trial. He did not face pressure to apologize to the public, even though he was one of the parties involved in the video. The shame experienced by the women in this case is much more intense. Even if they have not been found guilty by the court as their case has not been adjudicated yet, they have been found guilty by the media and Indonesian society.

#### ***GA and MYD Case (2020)***

Ten years after the AP, LM and CT case, GA, a woman public figure, was caught in a similar case of distribution pornographic content that was made for private ownership yet was spread through social media platforms by others without her consent. This case started on 2017 when a woman and a man (who are recognized as GA and MYD) had sex in a hotel in Medan and recorded this with a smartphone. Early November 2020, a 19-second pornographic video circulated on social media with a female character who looked very similar to GA. This video was reported by Febrianto Dunggio as the General Chairperson of the NGO Alliance of Young Indonesian Fighters to the police (Polda Metro Jaya) and the Ministry of Communication and Information on the grounds of disturbing the public.<sup>26</sup> Shortly after, GA herself reported the infringement of personal data. Following an investigation carried out by the police, on 29 December 2021, GA

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Enforcement and Oversight Institution (LP3HI) aimed at releasing the status of suspects CT and LM, was rejected by the South Jakarta District Court on August 7, 2018.

<sup>25</sup> Bandung High Court, "Decision Number 68/Pid/2011/PT.BDG", p. 32.

<sup>26</sup> Adi Briantika, "The Rubber Article of the Pornography Law Can Turn Victims into Perpetrators", <https://tirto.id/pasal-karet-uu-pornografi-bisa-ubah-korban-jadi-pelaku-f8JU>, accessed January 21, 2021.



and MYD were named suspects with charges based on Article 4 Paragraph (1) *jo.* Article 29 and/or Article 8 *jo.* Article 34 of Pornography Law and threatened with imprisonment for a minimum of 6 months and a maximum of 12 years and/or a fine of at least 250 million rupiahs and a maximum of 6 billion rupiahs.<sup>27</sup>

This situation triggered a public outcry, with both critics and those who pitied the accused speaking out. Public comments related to this case continued to spread widely and even targeted GA's family and relatives, such as media requests for comments to GM (her ex-husband) and even questioning her child's future, GNM. This situation was also exacerbated by the mass media which released clickbait titles regarding this case or even articles that were completely irrelevant to the case, such as interviewing parties outside GA or MYD and making news such as from Kompas.com titled, "4 Comments from RM (GA's former in-laws) Regarding GA's Determination as a Suspect"<sup>28</sup>; news from Gridstar.id titled, "After the long silence, GM (GA's ex-husband) finally gives this response to the question of the video of the girls who looks like GA, admits to be disturbed"<sup>29</sup>; and also news from Kumparan.com titled, "#KasianG (*the initial of GA's daughter name*) Trending After Explicit Videos Similar to GA Went Viral" by adding a snippet from the video.<sup>30</sup> It did not stop there. Indonesian media mass published excerpts of the video, adding GA's full name and history, together with photos of GA. While in fact, according to Article 5 of Journalistic Code of Ethics, the identity of GA as an OGBV victim should have kept secret, without any exceptions – the fact that GA is a public figure should not make a difference.<sup>31</sup> The media crews did not show any consideration to the OGBV perspective, so a lot of news just cornered GA and revictimized her, perpetuating the harmful features of a patriarchal culture. As an

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<sup>27</sup> Muhammad Isa Bustomi, "The Video Case File of Syur Gisel and Nobu Has Been According, The Police Send It Back to the Prosecutor's Office", <https://megapolitan.kompas.com/read/2021/03/02/16215911/berkas-kas-video-syur-gisel-dannobu-has-completed-police-kirim?page=all>, accessed March 5, 2021.

<sup>28</sup> Baharudin Al Farisi, "4 Comments by Roy Marten on the Determination of Gisel as a Suspect", <https://www.kompas.com/hype/read/2021/01/04/105522566/4-komentar-roy-martensalah-penetapan-gisel-as-suspect?page=all>, accessed June 25, 2021.

<sup>29</sup> Tiur Kartikawati Renata Sari, "Lam Silence, Gading Marten Finally Gives This Response About Syuro Video Similar to Gisella Anastasia, Admits Disturbed by Gossip Linking It", <https://star.grid.id/read/452482816/lama-bungkam-gading-marten-finally-reports-this-the-video-syuro-like-gisella-anastasia-admit-to-be-bothered-with-gossip-related-it?page=all>, accessed June 25, 2021.

<sup>30</sup> Artist News, "The hashtag #KasianGempi is trending after an exciting video like Gisella Anastasia Viral", <https://kumparan.com/berita-artis/tagar-kasiangempi-trending-usai-video-syur-miripgisella-anastasia-viral-1uXanjRj20R/full>, accessed June 25, 2021.

<sup>31</sup> Press Council, *Journalists' Pocket Book*, Cet. 7, (Jakarta: Press Council, 2017), p. 38.



illustration of this, media reports continued to ignore the victims' story about the incident, while the hashtag #KasianG (#PityG) which went viral after the video went viral on Twitter and referred directly to GA's child – who had nothing to do with this case. Responses from Indonesian citizens posted through this hashtag were also pitied G (her child), sneered at GA's inappropriate behavior, and thus labeled GA's with a cynical title as “Young Mama Unifying the Nation (*Mama Muda Pemersatu Bangsa*)”, because of how the viral video became the main discussion in the nation.<sup>32</sup>

GA herself held a press conference regarding this case at Four Seasons Hotel on 6 January 2021. She outlined several points through this press conference, such as thanking all those who came, apologizing to the Indonesian people, families, and relatives for her actions and “not being a good example”. She thanked the whole GA team and relatives during case settlement and promised to improve her behavior in the future and continuing to be cooperative with the legal process. However, there is one statement that should get more attention from the public and law enforcement officers. GA proclaimed, “*[You should] Know that the video was shown **without my permission** and that it is a part of my past and not from my new life today...*”.<sup>33</sup> This statement contained GA's identification as a victim – not a perpetrator - as she never had agreed to the distribution of the video which went viral without her consent. However, in the comments of this press conference video, there are still some comments existing to judge and victim-blames GA, such as user ‘MJ’ stating comments like, “*Spread positivity GA, know how to dress politely in the future, surely more people will respect you*”.<sup>34</sup> This comment alone earned 175 likes with 55 reply comments that reap the pros and cons from MJ's comments. Many users also left judgmental comments against GA. Several users blamed GA for the incident because her inability to ‘cover herself’. There were also parties who do not agree with this statement because according to them clothing is not a key factor in this condition, even morality. A minority of users pitied GA as being a victim and

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<sup>32</sup> Panji Baskhara, "Gisel's Video Link Hunted by Netizens on Social Media, Still Trending on Twitter Until It's Called Unifying the Nation". <https://wartakota.tribunnews.com/2020/11/07/linkvideo-gisel-diburu-netizen-di-medsos-masih-trending-di-twitter-to-disebut-pemersatubangsa? page=2>, accessed June 25, 2021.

<sup>33</sup> KH Infotainment, “Gisella Anastasia Holds Her Cry, makes a hole in Sorry and Regret”, [https://www.youtube.com/watch?v=qjOT\\_acPCZA](https://www.youtube.com/watch?v=qjOT_acPCZA), seconds 2:58 to 3:09, accessed 25 June 2021.

<sup>34</sup> KH Infotainment, “Gisella Anastasia Holds Her Cry, makes a hole in Sorry and Regret”, [https://www.youtube.com/watch?v=qjOT\\_acPCZA](https://www.youtube.com/watch?v=qjOT_acPCZA), Comment Column, accessed June 25, 2021.



wanted to hearten her.<sup>35</sup> This case shows several facts. *First*, GA was not protected by the legal system as a victim of OGBV. *Second*, there is still a public perception that will refuse to view GA as a victim. *Third*, within the public debate there are those who speak out for GA as a victim, moral support many other victims lack as the debate solely took place because GA is a public figure.

### ***The Cases of LBH APIK Jakarta Partners (2021)***

Other women's experiences were obtained through the stories of OGBV victims who reported to LBH APIK Jakarta (hereinafter referred to as partners).<sup>36</sup> It should be noted that in this case, we use “partner” to refer to the “victim” so that the relationship between the staff as their companion and the victim is not a vertical relationship (between the victim and their attorney only), but parallel. The spirit is to empower victims, so that legal steps do not stop at LBH APIK as their legal representative, but also by providing information and knowledge for the partners so that they can empower themselves and seek law independently if they must carry out legal processes without LBH APIK.<sup>37</sup>

The first case involving Partner S and her ex-boyfriend concerns the repeated threat by him to distribute their intimate videos that he had kept on his smartphone. During their relationship, they had exchanged the intimate content with mutual consent, but following their breaking up, the perpetrator (named U) threatened to spread the content if she declined his “coffee” meetings.

*“Jadi aku kenal dari akun alterku di Twitter, Kak, lalu aku sempat tukertukeran kontak via WhatsApp dan muncul adanya hasrat seksual antara aku sama dia, ga lama kemudian kita juga tuker-tukeran foto intim itu, Kak,*

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<sup>35</sup> Ibid, Comment section, this is based on real cited comment on this page, like user EM saying: “Even the smartest people hiding their shit, the smell will show up somehow, I am sad for the ex-husband”, then user ROP said, “Women are so scary with her elegance and her surprising behavior... Women are really geniuses in hiding these things...”, user VW commented: “Finally she can speak well without jumping up and down, hair everywhere, tongue everywhere, with coquettish voice, hehehe”. On the other side, there are also people who shoutout their support to GA as user CC commented: “Cheer up GA, hopefully this problem shall pass”, then user MI commented: “Chin up Mama G, you’ve very brave on being honest and saying sorry is very admirable”, also user HP commented: “Hopefully this problem shall pass, imagine you in her shoes now...”

<sup>36</sup> The experiences of women OGBV victims are received straight away from the victims to the authors when Author 1 volunteered in Legal Services Division in LBH APIK from May to June 2021 to help the process of OGBV victims. The concept of consent itself is something that is given knowingly and without coercion to engage in sexual activity where everyone freely expresses their consent and one’s consent cannot be assumed.

<sup>37</sup> Interview with Kak Said, a staff from LBH Apik in 20 June 2021.



*tapi setelah putus hubungan dan aku minta dia hapus semua foto yang ada akunya, dia ga kunjung hapus dan malah ngancam bakal nyebarin foto aku, ada yang ada mukaku dan ada yang engga. Dia juga malah nyuruh aku hapus sendiri tapi harus ketemu buat ngopi gitu, tapi aku tau maksud dia lain Kak.”*

*“So, I know this man through my alter account in Twitter, then we exchanged numbers via WhatsApp and this sexual attraction arose between us. Not long after, we actually exchanged intimate photos. After I broke up with him, I asked him to delete all my photos, but he kept them instead and threatened to spread my pictures, some with my face and others without. He said I could delete them myself by meeting him for a coffee, but I knew what he had in mind.”*

A similar story is that of Partner AS when she was threatened by her ex-boyfriend, named AO, with the distribution of intimate videos. The sex was forced and recorded without Partner AS’ consent so with the objective to blackmail her by threatening that he would send the videos to her family and relatives.

*“Suatu hari di tahun 2017, aku diancem untuk berhubungan sama mantan aku, tapi aku gatau kalau ternyata seluruh hubungan tersebut direkam diem-diem sama pelaku pake kamera handpone-nya di tempat tersembunyi gitu Kak. Besokannya juga aku diancem sama dia untuk disebarin videonya gara-gara gamau aku putusin Kak, nah dari situ aku jadi tau kalo dia ternyata selama ini ngerekam diam-diam hubungan seksual kita. Dia juga ngancam mau nyebarin ke keluargaku Kak dan setelah beberapa kali dia juga sempet stalking aku dan itu bikin aku ga nyaman sama sekali.”*

*“One day back in 2017, I was forced to have sex with my ex. Back then I did not know that throughout the sexual activity, he recorded me secretly with a hidden smartphone. The next day, he threatened me to spread the video because I wanted to break up with him. Only then I realized that he had been recording the sexual act. He also threatened to spread the video to my family. After a while, he started to stalk me as well, he made me feel very uneasy.”*

Partner S and partner AS reacted differently on what they had gone through. Partner S immediately knew that she was victim of OGBV as she was familiar with the issue because she had participated in several activities relating to the Elimination of Sexual Violence Bill and also had read stories of other victims revealing their experiences using thread feature on Twitter, as she stated below:

*“Saat mengalami kejadiannya, uda tau kalo aku jadi korban KBGO karena sebelum-sebelumnya emang beberapa kali sempet ikut kegiatan yang ngebahas tentang RUU PKS dan sempet ada baca di Twitter yang pernah ngalamin hal serupa. Saat tau diperlakukan kayak gitu, aku jadi paham kalo aku emang gabisa sendirian dan butuh orang lain juga.”*





*“When I experienced the incident, I already knew that I was a victim of OGBV because before I participated in events that discussed Elimination of Sexual Violence Bill and I also read on Twitter regarding people that experienced something similar. When I knew I was treated like that, I understood that I should not be on my own and needed help from others.”*

On the other hand, Partner AS did not realize that what she had experienced, including the threats, are a form of sexual violence, as stated below:

*“Belum tau Kak kalo pada saat itu aku sedang mengalami kekerasan seksual dan justru baru tau akhir-akhir ini juga kalo ini termasuk revenge porn.”*

*“I didn’t know then that what I was experiencing was sexual harassment and I only found out recently that this is called revenge porn.”*

Both experienced the same practice of OGBV in the form of sextortion, which is a form of sexual exploitation carried out by the perpetrators by making use of their power in their relationships to obtain sexual transactions, pictures, or videos from the victims (Ellen Kusuma and Justitia Avila Veda of SAFEnet 2020, 7). Both partners were threatened by their ex-boyfriends with the distribution of their intimate videos to force them to do things they did not want. In the case of Partner AS, the perpetrator demanded additional non-consensual production of sexual content and he started stalking her, so that she experienced a series of sextortion practices and violations of privacy (Ellen Kusuma and Justitia Avila Veda of SAFEnet 2020, 8).

The two partners both decided to report to LBH APIK because of their closest relatives’ assistance in order to get their legal protection. Unlike the previous two cases involving public figures, there were no criminal charges brought to the victims. The partners themselves also chose not to report the sexual violence and for various reasons opted for a mediation process. Partner S stated that the perpetrator only voiced threats and had not yet spread the content; or from Partner AS’ consideration who had removed the relevant evidence so that it will be difficult to report to law enforcement officers. The mediation route is considered by the partners the best legal option as they do not have to go through a long and complicated process following reporting the sexual violence to the police. Such mediation process starts with the preparation and delivery of a subpoena letter to the perpetrator, which will be followed by mediation to produce an agreement





between the victim and the perpetrator (*Surat Kesepakatan Bersama/ SKB*) regarding future actions (at the time of the interview, the perpetrators had not signed the proposed SKB). LBH APIK continues to be involved as their legal representative as there is the real possibility of future threats. With the presence of a signed SKB, the partners as the victims hope to be able to prevent further OGBV and can defend themselves in front of the law if something undesirable happens in the future.

In addition to legal assistance, partners also received psychological assistance. This is a crucial need that is sometimes overlooked in Indonesia. OGBV victims that decide to report to the authorities or even to a Civil Society Organization (CSO) often are afraid and anxious of what the perpetrators might do when they find out. It is likely as a majority of perpetrators of OGBV are among the victim's closest circle, such as friends, boyfriends or girlfriends, or their exes. Victims will experience mixed feelings when reporting them as they may still have affectionate feelings for the persons who practiced OGBV against them. Such mixed feelings were experienced by Partner S and Partner AS. Nonetheless, the two partners expressed their hopes that the state provides legal protection for women OGBV victims, and the socialization regarding the existence of LBH APIK and other CSO's where victims are able to seek legal protection and encouragement. They hope that in the future OGBV victims in Indonesia can be more vocal about their experiences, to seek help, and not being blamed and blaming themselves for becoming a victim of sextortion practices.

### **III. Stagnation and Legal Vacancies in Indonesia**

The cases described above illustrate how the legal system in its application of the rules contained in Criminal Code, ITE Law, and Pornography Law, still has the tendency to position victims with multiple layers of punishment. This is shown by the first court decision involving 'Rejoy', AP, LM, and CT in which 'Rejoy' distributed the intimate videos without the permission of AP, CT and LM, the public figures who recorded their explicit videos. The court failed to consider that AP, CT, and LM's rights to privacy were violated by 'Rejoy's' actions when he published the personal content to the public without permission or without the consent of the parties involved in the video. In fact, AP had given Rejoy the instruction to delete all copies of the videos. As a result of Rejoy's action, CT and LM as women public figures, became multi-layered victims of data leaks that



should be privately owned and not disseminated without their consent. As a result of massive pressure from the Indonesian people the women victims had to apologize publicly, suffer excessive public embarrassment, and lost several contracts. The mass media coverage even attached the label 'national disturbance' to their actions. Thus, in addition to the legal substance of the law and its application by the legal authorities that already were not in favor of the victims, as women public figures they also were assigned the responsibility for having disturbed the nation's morality.

In the ten years between the two cases the views within Indonesia's legal system had not changed much. In the settlement process of the GA and MYD case, law enforcement officers again emphasized the morality issues instead of protecting the privacy of the victims, which makes the position of the victims very vulnerable. They are blamed for having violated the moral values that live in society. As a result, the act of OGBV is considered the logical consequence of the acts of the victim. When the victim is a public figure, public opinion will turn on them. This often hinders and holds back consideration for factors that vindicate the victim's rights to truth, justice, and remedies. Victims are considered a family disgrace and are often humiliated, hated, ostracized, and expelled. Such chain of adverse consequences of the case becoming public can certainly make the victim to have second thoughts about pursuing a legal case concerning the violence she experienced and instead take the blame herself to end it all. Even when the victim dares to report the case to the police, she will experience unsympathetic attitudes, starting from the police report, service provider institutions, judiciary, to the health services. Even though eventually the perpetrators of OGBV were penalized, and the suspect status for GA and MYD was revoked, the long-term effects experienced by GA and MYD as OGBV victims were still not considered in the legal process.

Until today (January 2022), there is no specific legislation that protects OGBV victims in Indonesia. The urgency is real, as the creation and dissemination of information through internet as a medium will continue to grow rapidly and any placement of explicit material will be very difficult to contain. When this happens, women become multiple victims. The cases discussed here show that, it is the women victims who always ended up apologizing under pressure from society– not men. This again shows that there is an unequal position between women and men, and especially women public figures will undergo a “punishment” process, in line with the patriarchal culture in Indonesian society, where women are positioned as parties who should



apologize and are more guilty than men because they are considered to have a responsibility to safeguard the nation's morality.

The protection of personal data and cybercrime is regulated in ITE Law. The protection that can be provided derives from Article 26 paragraph (1), where it recognized the legality of consent before a data privacy can be distributed. Furthermore, paragraph (2) of the same article stipulates that individuals can file a lawsuit for the violation of paragraph (1). Unfortunately, the absence of our legal authorities' understanding of the concept of "consent" and "privacy" have rendered these protections irrelevant. Moreover, the ITE Law lacks a gender perspective and provides tools for law enforcement officers to persecute parties involved in content that is sexually charged on grounds that the acts are not in accordance with morals. Consequently, victims are vulnerable for re-victimization, meaning that it is a concept of a crime being reported and happening again after the report itself (Puti Marsha Diani 2014, 9).

The Criminal Code is also very limited in regulating sexual violence, by knowing only rape, obscenity, and sexual intercourse – OGBV is absent. Meanwhile, the Criminal Procedure Code (KUHAP) has not yet accommodated the procedural law that is sensitive to victims and gender. The entire legal system in Indonesia, which formally aims to protect women and children victims of GBV and OGBV, often plays a negative role. Often legal actors take an insensitive, prejudiced position towards the women victims, for instance by giving statements or posing questions that are demeaning and irrelevant to the case. This happened in the cases described above and in many others. OGBV regulations must be made with a gender perspective and the implementation must be equally gender-sensitive to ensure fair treatment of OGBV victims.

#### **IV. Application of OGBV Law with a Victim Perspective**

In the era of digital, consent is pivotal. When consent is given for one specific thing only, its scope cannot be expanded. In the context of OGBV, it is important to recognize that when victims agree or give their consent to record or exchange intimate images, it does not mean that they give their consent for the content to be shared or disseminated to the public. The dissemination of such personal data should be considered a violation of privacy, especially in the public sphere. Unfortunately, existing regulations in Indonesia do not sufficiently cover these two crucial matters of consent and privacy, and they are not applied through a gender lens. However, a new Bill related to acts of sexual violence, the Elimination of Sexual Violence Bill (widely known and will be abbreviated as RUU



PKS) has the potential to provide a breakthrough. In the RUU PKS, the types of sexual violence that are regulated are more comprehensive and can fill the legal lacunas of the Criminal Code which only regulates rape and obscenity. The RUU PKS has also regulated the protection of the rights of victims such as the right to treatment, the right to protection, and the right to recovery, and even the right to obtain assistance services such as complaint services, health, and psychology, which was not specifically regulated in the Criminal Code and ITE Law.<sup>38</sup>

The RUU PKS itself does not have a minimum requirement of two witnesses as stated in ITE Law and Pornography Law, but instead emphasizes evidence such as a psychologist and/or psychiatrist's certificate regarding the condition of the victim, medical records and/or the results of a forensic examination of the victim, records of examinations during the investigation process, information that is electronically available during the OGBV practice, as well as results of checking bank accounts.<sup>39</sup> In addition, Article 45 of RUU PKS states that the statements of victims and witnesses from relatives (who are by blood, by marriage, up to the third degree) can be sufficient proof of the defendant's guilt if accompanied by one other piece of evidence. Statements of victims or other witnesses who have mental disabilities can be treated as valid evidence (excluded from taking oath before the court).<sup>40</sup> This regulation significantly strengthens the position of the testimony of victims. Currently, the absence of witnesses weakens the position of OGBV victims in the eyes of the law, which causes the current Criminal Code and ITE Law regulations to be not very effective in implementation. LBH APIK experiences this as it annually receives hundreds of reports, while only 10-20 victims dare to report to the police and only 1-2 victims proceed their case to the court.

Another obstacle in protecting OGBV victims is the absence of a gender perspective, not only in the legal product itself, but also in the application of the law, and in those responsible for the application of the law. There are too many enforcement officers, both men and women, who are gender-biased and do not understand the deep-rooted unequal position between men and women. Starting with the police as the first party to report, victims are often blamed for what happened to them. Often the initial report is not pursued further because it is considered to be lacking evidence while OGBV victims are being lectured on moral values. Examples are statements like, "*Wow, this is*

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<sup>38</sup> Elimination of Sexual Violence Bill, Article 48, in meeting of 8 December 2021.

<sup>39</sup> *Ibid*, Article 18 paragraph (3).

<sup>40</sup> *Ibid*, Article 45.



*found in many cases, Miss. Probably it happened to you because you did not wear the hijab/scarf or you did not dress properly”*, and so on. We have seen the partisanship of law enforcement in the discussed cases involving public figures, when law enforcement treats men and women victims unequally. If the victims involved are public figures, they are often the ones who are quickly identified as suspects (as in the GA case) without looking further into the case. The fact that recordings are private and intended for personal interests in accordance with the contents in the Explanation of Article 4 Paragraph (1) of Pornography Law, is insufficiently taken into consideration, where the same happened in the case of AP, CT, and LM.

SAFEnet guidelines mentions that there are two legal processes that can help the victims. *First*, the legal process through litigation which requires reporting to the police; and *second*, the non-litigation route by sending a subpoena letter and go through the mediation process. In the end, the choice must be made by the victim, which process they want to go through to get justice. The struggle to change the patriarchal culture among law enforcement officers and replace it with a gender perspective must continue to be carried out by women's advocacy institutions, by working closely with the police through discussions and evaluations between institutions related to handling cases, especially the handling of OGBV practices.

## V. Conclusion

Indonesia's legal policies insufficiently protect OGBV victims in accessing justice. Law enforcement officers continue to use the ITE Law, the Pornography Law, and the Criminal Code to charge victims of OGBV cases instead of protecting them. Protection of data privacy and the concept of consent are insufficiently invoked as legal officers tend to emphasize the breach of moral standards, generalizing the victims' experiences as a violation of decency, thus making them vulnerable to persecution.

The case of GA, as an Indonesian public figure, showed how the victim was mainly positioned as the creator of the pornographic content – and not a victim of OGBV practices and the privacy infringement that was done without her consent leading to the publication of the explicit content.<sup>41</sup> Social media policies are limited to deleting content on the platform without further action or prevention, which cannot ensure in any way that

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<sup>41</sup> This statement is based on legal basis that was sentenced upon GA as suspect with charges based on Article 4 paragraph (1) of Pornography Law, whereas GA should've been excluded by the substance written in the Explanation of the article.



the perpetrators no longer have access to the content. There is a real need in Indonesia for a regulation that specifically regulates the protection of OGBV victims, as the ITE Law, the Pornography Law, and the Criminal Code offer too little protection. This condition is exacerbated by the inadequate sensitivity of law enforcement officers regarding victim's positions when it comes to OGBV cases – where victims are often considered as the perpetrators who needs to be punished. A legal framework is needed that will break down the patriarchal stigmas to eliminate the systematic injustice faced by OGBV victims, and women victims of sexual violence in general.

Using *practical feminist reasoning* as part of the *Feminist Legal Method*, is a useful technique to discover the difficulties experienced by OGBV victims (including GA, LBH APIK partners, and victims after court ruling) when reporting their cases, due to the presence of law enforcement officers who do not fully understand how to proceed with OGBV cases and perpetuate the victim-blaming culture (Katherine Bartlett 1990, 849). A legal system that understands and listens to the victims' perspectives carefully is very much needed to improve the victims' unequal position.<sup>40</sup>

The absence of a legal policy that places OGBV victims as parties who need to be listened to and need to be protected causes that OGBV victims are often reluctant to report their cases to law enforcement officials out of the fear of being judged and instead, become the target of their perpetrators reporting back at them (on the grounds of defamation). This condition obscures the victims' intention to access justice even before stepping into the trial. There is this fear of trauma, shame, tarnished self-esteem, and further actions from the perpetrators that might place the victim in the position as helpless, even though a OGBV victim has the right to an equal opportunity to justice under the duty of the state to create a safe environment for all.

At a different level, the technology companies also have responsibility toward the spike of OGBV cases. This issue has been recognized by the Feminist Principles on the Internet<sup>42</sup>, where most of the social platforms do not offer gender disaggregated information on content moderation or takedowns (Florencia Goldsman & Jamila Venturini 2021). It is shown by the high number of users reporting concerns regarding the use of real names, or the placement of photos of women's bodies. Moreover, the

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<sup>42</sup> The Feminist Principles of the Internet was drafted by group of activists and advocates working in sexual rights, women rights, violence against women, and internet rights, which aims to provide a framework for women's movement to articulate and explore issues related to technology. Further information can be accessed on <https://feministinternet.org/en/about>.



obscurity of their room policies, allows for the promotion of hate speech and online violence. (Floencia Goldsman & Jamila Venturini 2021). It should be encouraged that Facebook, Twitter, Google, and many other big platforms to become willing to walk hand in hand in combatting OGBV and building a feminist internet by creating a safe space for women in the era of digital surveillance.

It is also important to build a culture and system that does not put a patriarchal stigma on victims without listening to them first. Public education needs to be improved regarding GBV, it must be underlined that it doesn't only occur in the real world, but also in cyberspace. Especially in the COVID-19 situation which requires all people to communicate online and limits access of women victims of OGBV to report. A possible solution for this lack of access to reporting is a "pick up" strategy by feminist activists, institutions, or communities aided by legal aid institutions such as LBH APIK, Komnas Perempuan, as well as the police. Also, we would propose for the Women and Children Services Unit/*Unit Pelayanan Perempuan dan Anak* (Unit PPA) and Criminal Investigation Agency/*Badan Reserse Kriminal* (Bareskrim) to work together in accepting and processing OGBV practices using Artificial Intelligence technology and ensuring the digital security of the victims' contents are safe from further threats by the perpetrators.

It is time for the law to change to a more advanced level, especially regarding the position of women as victims of OGBV. Implementation of existing regulations has been unequal and therefore a feminist perspective is needed in handling and assessing GBV or OGBV cases. A legal environment must be created in which victims feel comfortable to speak up for themselves and can entrust their experiences to the authorities. Only then the law will be inclusive and a safe place for women to seek protection.





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