



## Juridicial Review of Legal Protection Victims of Cyber Gender-Based Violence (Case Study of High Court Decision Number 150/PID/2020/PT BDG)

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### Abstract

*Cyber gender-based violence is a crime that arises due to the development of increasingly sophisticated information technology. In this case, women are more vulnerable to cyber gender-based violence than men. This cyber gender-based violence results in a person's freedom not only being threatened directly in the real world but also in cyberspace, especially the difficulty of identifying the identity of the perpetrator and the victim's digital footprint that has been spread on the internet is difficult to erase. This study aims to determine the legal protection provided by the state to victims of cyber gender-based violence and to determine whether the High Court Decision Number 150/PID/2020/PT BDG has provided protection for victims of cyber gender-based violence. The approach method used in this research is normative juridical research method with qualitative descriptive research specifications. The techniques used to collect data are literature study and documentation study. Based on the research that has been conducted, it is concluded that the protection of victims of cyber gender-based violence is regulated in Law Number 12 of 2012 concerning Criminal Acts of Sexual Violence, which in this law regulates the criminal provisions of the perpetrators and the rights of victims, in this case victims are entitled to restitution, recovery services, and protection, where the fulfillment of these rights is an obligation of the state. And based on the analysis of the decision of the High Court Decision Number 150/PID/2020/PT BDG, it has not provided maximum protection to victims of cyber gender-based violence due to overlapping regulations which cause unclear legal protection for victims of cyber gender violence, especially the existence of rubber articles in the ITE Law which have become a tool to criminalize victims of cyber gender-based violence.*

**Keywords:** *gender violence, technological development, patriarchy, legal protection.*

### A. Introduction

In essence, humans are created with the same degree without any difference between men and women, but this is contrary to the current situation in Indonesia, where the patriarchal culture still continues amid the development of the times and globalization. This patriarchal culture is a culture that has existed for generations. This patriarchal culture and gender inequality is a problem that has not yet been resolved despite the many movements of women activists who are aggressively voicing gender equality and equal rights for Indonesian women. This patriarchal system encourages the formation of gender inequality and injustice among Indonesian society. This is what causes women to be placed in the position of second-class citizens where their existence is less taken into account by society, with this situation resulting in women often being considered weak and vulnerable to various acts of violence, harassment and discrimination. Until now, patriarchal culture still continues amid the rapid development of technology and information. Technological developments that are not matched by public awareness in social media have also resulted in the emergence of various new forms of violence, one of which is cyber gender-based violence. Cyber gender-based violence is a type of violence that

results in a person's freedom not only being threatened in the real world but also in cyberspace. This is what causes unrest and insecurity among the community in using social media and the internet, especially for women where women are more vulnerable to becoming victims of cyber gender-based violence. This is exacerbated by the fact that.

it is difficult to identify the identity of the perpetrator and the victim's digital footprint that has spread on the internet is difficult to erase. so that protection for victims of cyber gender-based violence still cannot be fulfilled to the fullest and even victims of cyber gender-based violence who should get protection and security in some cases they are made suspects and must receive punishment. The explanation above shows that the implementation of Cyber Gender-Based Violence in Indonesia is still inconsistent and the lack of a comprehensive understanding of gender and sexuality and protection for victims, so it is necessary to have a study that discusses further about cyber gender-based violence. In accordance with the background that the author has written, the author takes the research title "JURIDICAL REVIEW OF LEGAL PROTECTION AGAINST Cyberbased VIOLENCE VICTIMS (Case Study of High Court Decision Number 150/PID/2020/PT BDG)".

Based on the background that has been stated above, the main problem that will be the focus of this research are: 1. How is the protection of victims of cyber gender-based violence in law? 2. Has High Court Decision Number 150/PID/2020/PT BDG provided protection for victims of cyber genderbased violence?

## **B. Research Method**

The approach method used in this writing is the normative juridical research method, which is a library research, namely research on secondary data. Secondary data has a scope that includes personal letters, books, to official documents issued by the government. (Surjono, 2004) The specifications of this research are qualitative descriptive, namely a type of research that provides an overview and explanation of the implementation of legal protection for victims of cyber gender-based violence, by describing the data that has been obtained from the results of data collection using literature study and documentation study, which is then analyzed based on the theory of Sugiyono. The steps for analyzing data in this study include data collection, data reduction, data display, and conclusion drawing with the aim of describing the issues raised in this study with the title Juridical Review of Legal Protection for Victims of Cyber Gender-Based Violence (Case Study of High Court Decision Number 150/PID/2020/PT BDG).

## **C. Results and Discussion**

### **1. Protection of victims of cyber gender-based violence in law.**



Protection of victims of cyber gender-based violence is a very important thing, where in this case the victim is the party who is much harmed both physically and psychologically so that a form of legal protection is needed for victims of cyber gender-based violence considering that every citizen has the right to get legal protection without exception. Legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that manifest in attitudes and actions in creating order in the association of life between fellow human beings (Muchsin, 2003). With legal protection, it will ensure the fulfillment of human rights for citizens, one of which is the right to be free from all forms of violence. Violence is an intentional act or a form of action or action that is negligence, all of which are violations of criminal law, which are carried out without a defense or basis of truth and are sanctioned by the state as a serious criminal offense or a minor violation of law (Topo, Eva, 2010). The definition of violence is not only physical, but also mental and even passive (Gultom, 2013). Violence is more seen from the consequences it causes, whether it is physical injury or disability to death, or psychological, emotional and sexual impacts (Irianto, Nurtjahjo, 2020). while Cyber gender-based violence is a term used to describe various forms of violence that endanger or cause suffering to a person, which is carried out based on social differences including male and female gender, which can result in physical, sexual, psychological, and / or neglect suffering including in the form of threats, confinement and various other forms that deprive a person of freedom, both in public / public spaces and in private life (Ridwan, 2006). In addition to gender differences, the psychological factor of the perpetrator who is a victim of a form of inability to defend himself, so that he does the same thing to the victim, a low moral level and a lack of sexual education are also the causes of cyber gender-based violence (Sahat, Ira, 2021). The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, defines a victim as a person who suffers physical or mental harm, emotional suffering, economic loss or substantial damage to their human rights as a result of a violation of the law in force in a country (Lilik, 2012) Therefore, legal protection for victims is very important, but until now there has been no regulation that contains this cyber gender-based violence specifically, but there are several regulations that are still related and used in handling cyber genderbased violence, namely: a. Criminal Code (KUHP). The Criminal Code (KUHP) is a Dutch book that is still used in Indonesia in handling various criminal problems. The Criminal Code itself contains several articles that are still related to cyber genderbased violence, namely Article 281 - Article 282 of the Criminal Code which emphasizes that anyone who broadcasts, shows or puts in public a writing, picture or object, the contents of which are known and which violate decency, shall be punished with a maximum imprisonment of one year and six months or a maximum fine of three thousand rupiahs. In



addition, Article 315 of the Criminal Code, Article 368 of the Criminal Code, and Article 369 of the Criminal Code are also articles in the Criminal Code relating to cyber gender-based violence.

- a. Law Number 44 of 2008 concerning Pornography. The Pornography Law has provided various legal protections for victims of cyber gender-based violence, although in practice it has not been able to provide maximum protection. This protection can be seen in several articles such as Article 4 of the Pornography Law which states that every person is prohibited from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains intercourse including deviant intercourse, sexual violence, nudity or displays that give the impression of nudity, genitals, or child pornography. In addition to legal protection, Law Number 44/2008 on Pornography also provides a form of recovery for victims, this can be seen in the provisions of Article 16 paragraph (1) of Law Number 44/2008 on Pornography which states that the Government, social institutions, educational institutions, religious institutions, families, and/or communities are obliged to provide guidance, assistance, and social, physical and mental health recovery for every child who is a victim or perpetrator of pornography. With the provisions of Article 16 paragraph (1) of Law Number 44 of 2008, it does not only provide legal protection, but also guarantees to get guidance, assistance and recovery both socially, physically and mentally for victims. This is provided so that victims can feel safe, can recover from their trauma immediately and can return to carrying out their social functions in society.
- b. Law No. 31/2014 on Amendments to Law No. 13/2006 on Witness and Victim Protection. The Witness and Victim Protection Law is a regulation that provides special protection for witnesses and victims of criminal acts, including victims of cyber gender-based violence who need to receive legal protection at every stage of justice both at the police level and in court. Based on Article 5 paragraph (1) of the Law on Witness and Victim Protection, victims have the right to obtain protection of personal security, family, property, and freedom from all forms of threats. In this case, the party authorized to provide protection for victims based on the provisions of the Witness and Victim Protection Law is LPSK (Witness and Victim Protection Agency). To obtain protection from LPSK, victims of cyber gender violence must submit an application to LPSK, which later LPSK will provide protection by cooperating with various parties such as law enforcement officials, or other related institutions in order to provide legal protection to victims optimally



- c. Law No. 19/2016 on the amendment of Law No. 11/2008 on Electronic Information and Transactions (ITE). This ITE Law is a law regulating all matters relating to information and electronic transactions or criminal acts committed through information media. One type of criminal offense committed through information technology media is cyber gender-based violence. Another instrument that is also problematic in resolving cases of GBV is Law Number 11/2008 on Electronic Information and Transactions (ITE Law), which in fact creates problems because GBV is an act of attack on sexuality and gender identity. However, the ITE Law does not guarantee safety and protection for victims (Putri, 2021). Based on Article 27 paragraph (1) of the ITE Law, which reads "that every person intentionally and without the right to distribute and / or transmit and / or make accessible electronic information and / or electronic documents that have moral content." This article is the most appropriate article to use in cases of cyber gender-based violence, but this article also has a legal loophole where it can be used to criminalize victims of cyber gender-based violence, who were originally victims can become suspects because Article 27 paragraph (1) of the ITE Law is very multi-interpretive so it is often misinterpreted. In addition to Article 27 paragraph (1), Article 30 of the ITE Law is also an article that regulates cyber-based gender violence more specifically, namely regarding illegal access, namely an act of entering an information system or someone's electronic system without permission and consent with the intention of stealing important data or gaining personal gain. Meanwhile, Article 31 of the ITE Law regulates the prohibition for everyone who without the right to intercept or tap electronic information / electronic documents belonging to others or in other words, cyber hacking.
- d. Law Number 12 of 2022 on Sexual Violence Crimes. With the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, hereinafter referred to as the TPKS Law, it became a progressive breakthrough in resolving cases of sexual violence in Indonesia. Article 4 paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS) regulates nine forms of sexual violence, namely non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. Based on Article 4 paragraph (1) of the TPKS Law, therefore this Law does not only regulate sexual violence committed directly or sexual violence in general but also regulates electronic-based sexual violence. The nine forms of sexual violence as mentioned in Article 14 paragraph (1) are complaint offenses, which means that they can only be



followed up by the authorities if the criminal act is complained about by the person who is the victim or the person who feels he is harmed, but in this case there are exceptions for victims who are Children or Persons with Disabilities, this complaint offense does not apply and turns into an ordinary offense so that it can be followed up or criminalized without a complaint. With the regulation of electronic-based sexual violence in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), it provides a new color for law in Indonesia, where so far regulations related to cyber gender-based violence itself still overlap and are not very effective in resolving cases of cyber gender-based violence.

## **2. Legal protection for victims of cyber gender-based violence in High Court Decision Number 150/PID/2020/PT BDG.**

Legal protection is the provision of protection to human rights that are harmed by others, which protection is given to the community so that they can enjoy all the rights granted by law, in other words, legal protection is legal efforts that must be provided by law enforcement to provide a sense of security, both in mind and physically from disturbances and various threats from any party (Satjipto, 2000). Every citizen has the right to legal protection from all forms of actions that threaten, endanger, and take away their freedom and rights as citizens. Legal protection is given to victims with the intention of guaranteeing and protecting the rights of victims so that they are not violated and get legal justice for all the losses they have received. Everyone who is a victim of a crime or criminal offense is entitled to protection from the Witness and Victim Protection Agency (LPSK), including victims of cyber gender-based violence. To find out whether High Court Decision Number 150/PID/2020/PT BDG has provided legal protection to victims of cyber gender-based violence, the following is an analysis of High Court Decision Number 150/PID/2020/PT BDG: One of the cases of cyber gender-based violence that has occurred in Indonesia is the case of Pina Aprilianti in 2018. Pina Aprilianti was a victim of cyber gender-based violence, at which time the immoral video of Pina Aprilianti was spread to social media by her own husband, Asep Kusmawan. However, Pina Aprilianti was made the defendant Pina Aprilianti was charged by the Public Prosecutor with the first charge of violating Article 4 Paragraph (1) letter a Jo. Article 29 of Law Number 44 of 2008 concerning Pornography Jo. Article 55 paragraph (1) to 1 Criminal Code and the second charge is violating Article 8 Jo. Article 34 of Law Number 44 of 2008 Concerning Pornography Jo. Article 55 paragraph (1) to 1 of the Criminal Code. Based on the Decision of the Court of Appeal Number 150/PID/2020/PT BDG upholding the decision of the Garut District Court Number 289/Pid.Sus/2019/PN GRT, the Defendant Pina Aprilianti Binti Revi Sutarman has been proven legally and convincingly guilty of committing the crime of



"intentionally participating in being an object containing pornographic content" as in the second alternative charge. Sentencing the Defendant therefore, to imprisonment for 3 (three) years and a fine of Rp. 1000,000,000,- (one billion rupiah), provided that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months. With the decision of the Court of Appeal, Pina Aprilianti, who was originally a victim, must serve a prison sentence for a short period of time, namely 3 (three) years with a large fine. This is of course the result of the many legal loopholes due to the absence of laws that regulate the types of cyberbased violence more specifically, especially the protection of its victims. This confirms that victims of cyber gender-based violence in Indonesia have not received proper protection that protects their rights as victims, especially since Pina Aprilianti is not only a victim of cyber gender-based violence but also a victim of sexual exploitation and human trafficking. Where Pina Aprilianti in 2017 was a minor who was forced to marry by her parents to a man who at that time was 30 years old in a siri, during her marriage Pina Aprilianti was sexually exploited by her husband, Asep Kusmawan, who has a deviant sexual disorder (deviation sexual paraphilia), where Pina Aprilianti when having sexual intercourse with her husband was then recorded by her husband, Asep Kusmawan, In addition, Pina Aprilianti was also trafficked by her husband Asep Kusmawan through Twitter media, Asep advertised Pina Aprilianti by uploading videos containing sexuality when they had sex which had been recorded by Asep Kusmawan previously. The video uploaded by Asep Kusmawan is what makes Pina Aprilianti a perpetrator of pornography as charged by the Public Prosecutor in High Court Decision Number 150/PID/2020/PT BDG.

#### **D. Conclusion**

Based on the research and discussion previously described, the following conclusions are obtained: 1. Legal protection of victims of cyber gender-based violence can be seen from several laws, including the Criminal Code (KUHP), Law Number 44 of 2008 concerning Pornography, Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE), Law Number 12 of 2022 concerning Crimes of Sexual Violence, and Law Number 31 of 2014 concerning Witness and Victim Protection. Of the many laws that can be used in cases of cyber gender-based violence, there is one law that is relevant to be used in handling cases of cyber gender-based violence, namely Law Number 12 of 2022 concerning criminal acts of sexual violence (TPKS), which in this law regulates 9 (nine) types of sexual violence, one of which is electronic-based sexual violence. Based on the TPKS Law, victims of cyber gender-based violence are entitled to restitution and recovery services. Victims also have other rights such as the right to handling, the right to protection, and the right to recovery, where the fulfillment of these rights is an obligation of the State. Regarding protection for victims of cyber genderbased violence, the police can provide temporary protection to victims and the police



are also authorized to limit the movement of the perpetrator and limit certain rights of the perpetrator. In terms of providing protection, the police are required to submit a request for protection to the Witness and Victim Protection Agency (LPSK) as regulated in Article 43 paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS). 2. High Court Decision Number 150/PID/2020/PT BDG has not provided maximum protection to victims of cyber gender-based violence due to overlapping regulations that cause unclear legal protection for victims of cyber gender-based violence, especially the existence of rubber articles in the ITE Law which are actually a tool to criminalize victims of cyber gender-based violence. This was experienced by Pina Aprilianti as a victim of cyber gender-based violence committed by her husband Asep Kusmawan, but instead she was made a defendant and sentenced as stated in the High Court Decision Number 150/PID/2020 which stated that the Defendant Pina Aprilianti was legally and convincingly proven guilty of committing the crime of participating in intentionally becoming an object containing pornographic content and as a result of this, Pina Aprilianti was sentenced to imprisonment for 3 (three) years and a fine of Rp. 1000,000,000, - (one billion rupiah), this confirms that the High Court Decision Number 150/PID/2020/PT BDG has not provided protection for victims of cyber gender-based violence..

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