

RESTORATIVE JUSTICE IN ADULT WOMEN VICTIMS OF ELECTRONIC-BASED SEXUAL VIOLENCE

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Abstract

Sexual violence is a form of criminal act that in the modern era is rampant in Indonesian society. Based on data from the KOMNAS Perempuan RI, in 2021 there have been approximately 1,721 Reported cases of violence against women. This Sexual Violence does not only occur physically but has evolved into Electronic-based Sexual Violence. This Electronic-Based Sexual Violence has been regulated based on Article 14 paragraph (1) Law Number 12 of 2022 concerning "Criminal Acts of Sexual Violence", hereinafter referred to as the "TPKS Law". The resolution of Sexual Violence Criminal Acts cases has so far been carried out on a criminal basis, which does not pay attention to the interests of victims. Therefore, we to use Restorative Justice (RJ) as one way or alternative to solve cases of Sexual Violence Crimes, especially for electronic-based sexual violence in order to pay more attention to the rights of victims. This paper is written with the Dogmatic Normative Juridical research method which is realized through a conceptual approach and statute approach. The final result of this study is that RJ can still be applied both at the level of investigation and prosecution of electronic-based sexual violence crimes with notes: Provisions that apply to the perpetrators is Article 14 paragraph (1) of the TPKS Law where the threat of imprisonment is 4 years; there is no rejection from the Society; there is peace between the perpetrator and the victim; and the rights of victims are restored again by redress or other exercise of responsibility of the perpetrator. If one condition is not met, then RJ cannot be carried out and the criminal justice process continues in accordance with the Indonesian criminal procedure law.

Keywords: sexual violence, ITE crim, restorative justice, Indonesia

A. Background

As we can see in various reports both on social media and television news, sexual violence has been a problem that has long occurred in Indonesian society, because it can happen at any time and to anyone, whether women, men or children, whatever age they are young to old. But those who are often victims of sexual violence are women. Sexual violence is a sensitive issue because it affects the lives of women, including sexual violence and sexual harassment. Basically, violence often arises in women due to gaps in functions and roles, so that women are objects of violence who are considered weak and helpless creatures¹.

Along with the times, the advancement of information technology is a modern change, so that the internet is very helpful and makes it easier for people to socialize, business, education, and so on. With the increasingly sophisticated information technology, making the level of electronic-based crime through the internet network or cybercrime is increasing, thus troubling

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¹ Uswatina, E. D. (2021). *Power Perempuan Dalam Mencegah Kekerasan Seksual*. PT. Nasya Expanding Management, Hlm. 3.

and harming the community. According to Barda Nawawi, cybercrime is a criminal act because it resembles crimes committed in cyberspace².

Sexual violence that mostly occurs in the form of electronic-based sexual harassment, which includes non-physical sexual violence where most of the victims are women³. Sexual crimes in the form of harassment through electronic media are an act that provides discomfort, as well as trauma that can cause health problems to the victim's psyche. This act has unwittingly violated the human rights of victims. In this case, women who experience a lot of loss and suffering, thus making women afraid and traumatized by the events that have been experienced.

Based on Article 14 paragraph (1) of Law Number 12 of 2022 concerning "Criminal Acts of Sexual Violence", hereinafter referred to as the TPKS Law, states that "electronic-based sexual crimes are the act of recording and/or taking sexually charged images or screenshots against the will or consent of the person who is the object of recording or images or screenshots; transmit electronic information and/or electronic documents that are sexually explicit against the recipient's will directed against sexual desire; stalking and/or tracking using electronic systems against persons who are objects in electronic information/documents for sexual purposes". The threat of sanctions for electronic-based crimes is in the form of "imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 300,000,000 (three hundred million rupiah)" (Ps. 14 paragraph 2 of the TPKS Law).

In Komnas Perempuan's Note, "electronic-based sexual violence from 2017-2021 increased sharply, from 16 reports received by Komnas Perempuan in 2017 to 1,721 cases in 2021"⁴. It can be seen, sexual violence is increasing every year. The increasing crime that occurs, the resolution of a criminal case in the form of criminal sanctions for the perpetrator is not one of the expected solutions, but more concerned with the interests of the victim, a way of solving cases known as Restorative Justice is needed, hereinafter in this writing abbreviated as RJ.

RJ is the concept of solving cases carried out by discretion and transfer, where the punishment process is transferred by means of deliberation for consensus in order to achieve balanced goals and/or recovery for a situation⁵. With this solution, it is hoped that RJ can be an alternative solution to existing cases, especially criminal cases.

This study certainly has novelty because as far as the writing team has read in various journals, there has been no specific writing that discusses the

² Arief, B. N. (2003). *Kapita Selekta Hukum pidana*. Citra Aditya Bakti.

³ Rohan, C. (1998). *Pelecehan Seksual Hubungan Dominasi Masyarakat dan Minoritas*. PT Tiara Yogyakarta, Hlm. 4.

⁴ Komisi Nasional Anti Kekerasan Terhadap Perempuan. (2023). *Catatan Tahunan Komnas Perempuan "Kekerasan Terhadap Perempuan di Ranah Publik dan Negara: Minimnya Perlindungan dan Pemulihan."*, Hlm. 4.

⁵ Aryadi, D. (2020). IMPLEMENTASI KEADILAN RESTORATIF DALAM SISTEM PERADILAN PIDANA SEBAGAI PERWUJUDAN NILAI-NILAI YANG BERWAWASAN PANCASILA. *Jurnal UIN Al Auddin*, 9(2), 138-154. <https://doi.org/https://doi.org/10.24252/ad.v9i2.15046>

resolution of conventional sexual violence cases involving adults, which are electronic-based through the principle of restorative justice. The writing team found several studies related to solving sexual violence cases based on restorative justice but in cases with child perpetrators, as follows:

1. Research by Diyariesta Caesari and Subekti in 2022 with the title “Application of Restorative Justice in Resolving Sexual Violence Against Children in Magetan⁶”. The result of the writing is that there are several things that must be considered in handling sexual abuse cases with Child Perpetrators and Child Victims, one of which is justice for victims and perpetrators, handling using restorative justice is a way that can be taken to get joint justice in accordance with the Circular Letter of the Chief of Police Number SE / 2 / II / 2021 which prioritizes the principle of restorative justice in solving criminal cases which are Persuasive steps in order to provide a sense of comfort and a sense of justice for the parties involved and for the community, but whether this method can provide justice, especially for victims, because not only physical but victims are psychologically harmed, where victims who are children with unstable psychics can cause trauma.
2. Thesis written by Aidil Azhary Syahputra in 2023 with the title “Penerapan Restorative Justice dalam Kasus Kekerasan Seksual Terhadap Anak di Kota Medan (Studi di Polrestabes Medan)⁷”. The outcome of this thesis is the application of restorative justice for cases of child sexual violence in Medan city utilized by the police, yet there remains significant public unfamiliarity with restorative justice and a lack of victim/victim family participation in determining fines or restitution in the reconciliation process.
3. Research by Sayyidina Mufakkar, dan Rina Antasari with the title “Penyelesaian Kasus Catcalling Menggunakan Cara Restoratif Justice Perspektif Asas Kepastian, Keadilan dan Kemanfaatan Hukum serta Hukum Islam⁸”. In this study, it is well known that resolving cases of sexual violence in the form of catcalling using restorative justice is considered less effective because it primarily offers opportunities for leniency to the perpetrator, while the victim, who has suffered intangible losses and trauma, receives inadequate attention.
4. Thesis written by Nyayu Bela Aldia with the title “Penerapan Restorative Justice dalam Penyelesaian Perkara Kekerasan Pada Perempuan (Studi Kasus di Polres Metro Kota Depok)⁹”. From this

⁶ Caesari, D., & Subekti. (2022). Penerapan Restorative Justice Dalam Penyelesaian Tindak Pidana Kekerasan Seksual Terhadap Anak di Kabupaten Magetan. *RECIDIVE Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 11(3), 312–320.

⁷ Aidil Azhary Syahputra, “PENERAPAN RESTORATIVE JUSTICE DALAM KASUS (Studi Di Polrestabes Medan)” (Universitas Medan Area, 2023).

⁸ Sayyidina Mufakkar and Rr Rina Antasari, “Penyelesaian Kasus Catcalling Menggunakan Cara Restoratif Justice Perspektif Asas Kepastian, Keadilan Dan Kemanfaatan Hukum Serta Hukum Islam,” *Intizar* 29, no. 2 (2023): 152–58, <https://doi.org/10.19109/intizar.v29i2.20375>.

⁹ Nyayu Bela Aldia, “Penerapan Restorative Justice Dalam Penyelesaian Perkara Kekerasan Pada Perempuan,” (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2022).

study, it is proven that the implementation of case resolution through RJ in Depok city has been initiated but remains suboptimal. This is primarily due to the public's inadequate understanding of the existence and essence of RJ. The sense of justice for victims becomes a crucial benchmark, which must be substantiated in the peace agreement document. However, this aspect is not yet well understood by the community.

5. Research by Samdoni Sinaga and Julia Putri in 2023 with title "Pelaksanaan Restorative Justice Terhadap Kekerasan Seksual yang Dilakukan Oleh Anak"¹⁰. The findings of the research conducted in Asahan District (Asahan Police) indicate that there are still significant obstacles in resolving cases of sexual violence committed by children, primarily due to inconsistent participation of the victims' parties in restorative justice processes. Additionally, the surrounding community continues to perceive retaliation as the most effective approach to addressing criminal acts.

It should be understood that many researches and thesis have the principle that restorative justice can be applied in cases of sexual violence with child perpetrators and child victims. Many researches has not accommodated the need for knowledge related to solving electronic-based sexual violence cases with perpetrators and adult victims (adult female victims) using restorative justice. Therefore, RJ emerged because of criticism in implementing criminal justice, where punishment for perpetrators is considered inefficient in resolving social conflicts where in the conventional penal system the perpetrator languishes in bars, but the victim still feels suffering due to the actions of the perpetrator. Such is the case of electronic-based sexual violence. In conventional penalties, perpetrators are sentenced to prison for their crimes, but according to Article 1 point 4 of the TPKS Law, there is physical, economic, and even psychological suffering from victims who here should also be held accountable for their crimes. Based on this problem, the writing team wants to make an article entitled "Restorative Justice in Adult Women Victims of Electronic-Based Sexual Violence"

B. Identified Problems

The aim of this research is to explore more deeply whether restorative justice can be used or can be an alternative form to resolve electronic-based sexual violence cases. Based on the aim of the study poses questions, namely:

1. How is the application of Electronic-Based Sexual Violence based on the TPKS Law?
2. How is the application of Restorative Justice in Electronic-based Sexual Violence Cases?

C. Research Methods

¹⁰ Samdoni Jarwal Sinaga and Julia Rahma Putri, "Pelaksanaan Restorative Justice Terhadap Kekerasan Seksual Yang Dilakukan Oleh Anak," *EX-Officio Law Review* 2, no. 3 (2023): 240–48.

To answer the identified problems question, the Author team in writing legal scientific papers with the Dogmatic Normative Juridical Method, which uses writing techniques that focus on legal rules with the aim of “finding a provision, principle, and doctrine to answer the problems faced¹¹”. The Dogmatic Normative Juridical Method involves the exploration, examines, and explanation of legal doctrines, principles, and rules as deep as possible to address the legal issues¹². This writing uses several approaches, namely the Conceptual Approach, and the Statutes Approach. Conceptual Approach is an approach that departs from the views and doctrines of expert opinions that are relevant to the problem at hand¹³. Statute Approach is an approach through the review of laws and regulations that are related to the problem at hand¹⁴.

In this dogmatic normative legal research, we utilized the following primary legal materials:

1. Law Number 12 of 2022 concerning "Criminal Acts of Sexual Violence"
2. Law No. 11 of 2012 concerning the “Juvenile Criminal Justice System” (especially for child offenders)
3. Indonesian Police Regulation (Perpol) No. 8 of 2021 concerning “Handling Criminal Acts Based on Restorative Justice” (hereinafter referred to as Perpol 8/2021)
4. Regulation of the Prosecutor's Office of the Republic of Indonesia (Perjak) No. 15 of 2020 concerning “Termination of Prosecution Based on Restorative Justice” (hereinafter referred to as Perjak 15/2020).

We also find various theories on restorative justice from a range of literature books and research journals closely related to resolving cases through restorative justice mechanisms.

In relation to the utilization of dogmatic normative legal research, the initial phase in procuring resources for composing a scholarly article was accomplished through library research, specifically by means of an inventory sheet. Subsequently, after gathering the legal documents, the subsequent step involved categorizing and selecting the appropriate legal documents to be utilized. Lastly, the process of systematization was undertaken, which entailed establishing the hierarchical structure of laws and regulations. Upon completion of the aforementioned research procedures, the scholars utilized the syllogism inference technique to scrutinize the data. This involved a comprehensive analysis of general data, such as laws and regulations, texts, and expert opinions, followed by a more in-depth examination to provide accurate responses that aided in the proper formulation of the research

¹¹ Irawan, J. E. (2023). Tinjauan Yuridis Tentang Kepastian Hukum Kewenangan Perusahaan Dalam Pengegedahan Ponsel Pribadi Karyawan. *KRTHA BHAYANGKARA*, 17(1), 107–118. <https://doi.org/10.31599/krtha.v17i1.2045>

¹² Marzuki, P. M. (2010). *Penelitian Hukum*. Kencana Prenada Media Group, Hlm. 35.

¹³ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 2003, Hlm. 13.

¹⁴ Bahder J. Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2008, Hlm.92.

problem, which pertained to the legitimacy of implementing a flexible work system in Indonesia. To ensure the validity of the responses, the authors employed valid and systematic explanations. The definitive interpretation of a word's meaning, as defined in the legal document itself, is known as authentic interpretation. On the other hand, systematic interpretation entails explaining the meaning by taking into account the arrangement of related terms in the law.

D. Research Findings and Discussions

1. Restorative Justice in Solving Criminal Cases

Talking about Restorative Justice (RJ), of course, it must be discussed first about justice. The word "*adil*" comes from the word "*adl*" which comes from Arabic. In English it is called "justice". The word "justice" has similarities with the Latin "*justitia*", as well as the French "*juge*" and "*justice*". Justice is taken from the main word "*fair*" which according to KBBI has the same heavy meaning; unbiased; impartial, siding with the right; hold on to the truth duly and; not arbitrary¹⁵.

If you look at the Indonesian criminal law system, the pattern of Retributive Justice is very dominant. Retributive Justice itself is defined as justice that can only occur if there is retribution for crimes committed by someone¹⁶. This concept of retaliation can be seen from the articles in the Indonesian Criminal Code, where in general the conception of punishment or penalizing can be known.

Retributive justice that strongly promotes retribution does not see victims as subjects to be protected and restored to their rights. In an attempt to see victims as subjects whose losses must be recovered, the conception of restorative justice has emerged in this modern era. RJ has different guidelines to the conventional criminal justice system. RJ focuses more on crimes that cause harm to certain victims by imposing responsibility on perpetrators by compensating for losses due to actions committed through deliberation involving perpetrators, victims, and various elements of society. While the Conventional Criminal Justice System focuses more on crimes that are considered as an act that is against state law where the state must avenge the perpetrator's actions¹⁷.

RJ is very useful to complement criminal justice needs related to the fulfillment of victims' rights. RJ cannot abolish the existing criminal law, but in certain cases that can cause harm simultaneously, and related to one's life so that imprisonment is still applied. RJ aims to recover criminal acts committed by perpetrators so that their actions can benefit perpetrators, victims and the community directly involved in solving a

¹⁵ Kamus Besar Bahasa Indonesia, Arti Kata Adil.

¹⁶ Flora, H. S. (2018). KEADILAN RESTORATIF SEBAGAI ALTERNATIF DALAM PENYELESAIAN TINDAK PIDANA DAN PENGARUHNYA DALAM SISTEM PERADILAN PIDANA DI INDONESIA. *UBELAJ*, Hlm. 3.

¹⁷ Ali, M. (2021). *Viktomologi*. Rajawali Pers, Hlm. 56

case, but different from the way it is handled in adults. RJ itself is used by law enforcement as a frame of mind to respond to a criminal act¹⁸.

According to Komnas Perempuan, RJ is a solution to a criminal act that involves perpetrators and victims and their families from each party, as well as anyone who needs to be involved simultaneously in finding a fair solution by focusing on recovery, not retribution. RJ has a basic principle that focuses on recovery of victims who experience suffering due to a criminal act¹⁹, considering that victims have faced events of sexual violence will have a deep trauma, so victims need a treatment in order to return to normal, and restore the pattern of good relations in society²⁰. Therefore, victims must get more attention, so that victims can recover as soon as possible and return to society as before it occurred and experience sexual violence.

The application of RJ itself in criminal law enforcement in Indonesia is regulated in several rules as follows:

- a. At the Investigation Level: Indonesian Police Regulation (Perpol) No. 8 of 2021 concerning “Handling Criminal Acts Based on Restorative Justice” (hereinafter referred to as Perpol 8/2021)
- b. At the Prosecution Level: Regulation of the Prosecutor's Office of the Republic of Indonesia (Perjak) No. 15 of 2020 concerning “Termination of Prosecution Based on Restorative Justice” (hereinafter referred to as Perjak 15/2020)
- c. At the Court Hearing: Law No. 11 of 2012 concerning the “Juvenile Criminal Justice System” (especially for child offenders).

Referring to the sources of positive law about RJ in Indonesia, of course, in this writing the writing team will review more Perpol 8/2021 and Perjak 15/2020 which are directly related to the TPKS Law. This writing will not discuss RJ on the basis of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System because in this writing the writing team focuses on solving cases of conventional sexual violence where the perpetrators and victims are adults.

2. The Restorative Justice Application for Investigation and Prosecution Level in Indonesian Criminal Law Enforcement

¹⁸ Sari, D. P. Y. P., Wirastuti Sawitri, H., & Siti Muflichah, dan. (n.d.). PENERAPAN PRINSIP RESTORATIVE JUSTICE DALAM SISTEM PERADILAN PIDANA DI INDONESIA. *Soedirman Law Review*, Hlm. 115.

¹⁹ Yentriyani, A., Tardi, S. A., Hutabarat, R., Iswarini, T., & Amiruddin, M. (2021). *Pernyataan Sikap Komnas Perempuan Pada Pemberitaan Pernyataan Menkopolkam Tentang Restorative Justice “Pastikan Pelaksanaan Restorative Justice Memenuhi Hak Korban Atas Kebenaran, Keadilan dan Pemulihan.”*

²⁰ Defi Indriyani, A. (2021). PENDEKATAN RESTORATIVE JUSTICE DALAM MELINDUNGI KORBAN KEKERASAN SEKSUAL. *IJouGS: Indonesian Journal of Gender Studies*, 2(2), 44–56. <https://jurnal.iainponorogo.ac.id/index.php/ijougs/article/view/3284/2003>

The First Consideration of Perpol 8/2021 clearly shows how the Indonesian police want to emphasize the recovery of the condition of victims resulting from a criminal act through the RJ mechanism. RJ itself is defined in Article 1 number 3 of Perpol 8/2021, namely "Settlement of Criminal Acts involving Perpetrators, Victims, Perpetrators' Families, Victims' Families, Community Leaders, Religious Leaders, Indigenous Leaders, or stakeholders to jointly seek a just solution through peace by emphasizing restoration to its original state". This understanding of RJ is in accordance with the conception of RJ as stated by the author in the previous chapter.

The Indonesian Police can carry out RJ in 3 stages, namely in the Implementation of Criminal Investigation, Investigation, and Investigation Functions (Article 2 paragraph (1) of Perpol 8/2021). If the RJ is carried out in the Investigation or Investigation stage, the expected output or final result is peace which leads to the termination of the investigation or investigation (Article 2 paragraph (5) of Perpol 8/2021).

The implementation of RJ by the Police must still meet several conditions as stipulated in Articles 4 – 10 of Perpol 8/2021. The author underlines the provisions of Article 5 of Perpol 8/2021 where materially, cases that can be done by RJ by the police are cases that:

- a. Does not cause unrest and/or no rejection from the community
- b. No impact on social conflict
- c. Not radicalism and separatism
- d. Not recidivist
- e. Not criminal acts of terrorism, treason, crime and criminal acts against people's lives.

These five conditions must be met in order for RJ to be applied, if there is 1 condition that is not met then save the author RJ cannot be applied in that case. Furthermore, in Article 6 of Perpol 8/2021, Formil RJ can be applied if there is peace from both parties, and the fulfillment of the rights of victims and the responsibility of perpetrators.

Formally, the form of peace referred to in Article 6 of Perpol 8/2021 is through a Peace Agreement Letter signed by the parties (Article 6 paragraph (2) of Perpol 8/2021). The definition of the parties here is of course not only the perpetrator and victim, but the perpetrator's family, the victim's family, and other parties as written in Article 1 number 3 of Perpol 8/2021.

The fulfillment of the rights of victims and the responsibility of perpetrators can be done through the return of goods, compensation, reimbursement of costs incurred due to criminal acts, and compensation of damages incurred due to criminal acts. The fulfillment of the rights of victims and the responsibility of these perpetrators must be proven in accordance with the peace agreement signed by the parties (Article 6 paragraphs (3) and (4) of Perpol 8/2021).

In addition to the material and formal requirements of RJ from Perpol 8/2021, there are also additional requirements for Information and Electronic Transactions, Drugs, and Traffic (Article 7 of Perpol 8/2021). However, in this writing, it will only be studied more deeply about the Additional Terms for Information Crime and Electronic Transactions because it is closely related to the topic of this writing.

In Article 8 of Perpol 8/2021, RJ can be applied to cybercrimes that spread illegal content with the following conditions:

- a. Perpetrators are willing to delete content that has been uploaded
- b. The perpetrator delivered an apology through a video uploaded on social media accompanied by a request to remove the content that had spread
- c. The perpetrator is willing to cooperate with investigators to conduct further investigations.

At the Prosecution level, the definition and dream of RJ remains the same, namely the resolution of criminal cases by seeking a fair solution and restoring the original situation and not retribution. The final result of the implementation of RJ at the prosecution level is the Closing of the Case in the Public Interest (Article 3 of Perjak 15/2020). This conception is certainly in accordance with the Principle of Opportunity which is only owned by the Prosecutor's Office of the Republic of Indonesia based on Article 35 C of Law No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia.

Termination of prosecution through RJ must pay attention to the provisions and conditions stipulated in Articles 4-6 of Perjak 15/2020. The Writing Team more specifically wants to emphasize the conditions for restoration to its original state and the existence of peace between victims and suspects (article 4 paragraph (2) letter f and g of Perjak 15/2020). In addition to these general conditions, the author also wants to emphasize the specific conditions in article 5 paragraph (1), namely:

- a. First-time criminal suspect
- b. Only threatened with a fine or threatened with imprisonment of not more than 5 years
- c. Loss of victims not more than Rp. 2,500,000 (two million five hundred thousand rupiah).

After fulfilling all the conditions written in Article 5 paragraph (1) to (5) Jak 15/2020, of course, the suspect must carry out these conditions, especially in terms of indemnifying, reimbursing costs incurred due to criminal acts, or repairing damages caused by criminal acts. Of course, this implementation must be based on a peace agreement between the victim and the suspect and known to the community (Article 5 paragraph (6) Perjak 15/2020).

If the perpetrator and the victim have agreed peacefully, it needs to be stated in a deed / letter of peace agreement, then the perpetrator

must carry out his obligations to recover the victim. If all forms of peace and responsibility of the perpetrator have been implemented, the Prosecutor may stop the prosecution.

3. **Electronic-Based Sexual Violence Based on the TPKS Law**

Electronic-based sexual violence is the behavior of taking and/or recording content, tracking through an electronic system against someone who is used as an object of information for the purpose of sexuality without the consent of that person. Electronic or online-based sexual violence is divided into three forms, namely²¹:

- a. Sexual violence through the use of technology. Perpetrators molest, rape, and exploit a person's body and/or body parts to other individuals using the internet in a real way, as well as interactions that occur exclusively and paid.
- b. Sexual content disseminated over the internet. The content here can be in the form of images, videos, or screenshots containing conversations between perpetrators and victims that smell of sexuality and contain pornographic elements.
- c. Revenge Porn occurs between two parties who originally had an intimate closeness, where the perpetrator spread sexual content with the intention of damaging the victim's image, revenge, or in order to gain financial gain. For example, the spread of intimate photos of couples who commit infidelity for revenge.

Electronic-based sexual violence is also included in the category of non-physical sexual violence because it occurs directly without physical touch and/or utilizing intermediary equipment or only in the form of activities shown by the perpetrator to the victim, with imprisonment in accordance with Article 5 of the TPKS Law²². In the TPKS Law, electronic-based sexual violence is specifically regulated in Article 14, where the sanctions listed are a maximum prison sentence of 4 years and/or a fine of Rp. 200,000,000, but if it is carried out with the aim of extortion or threatening, coercing or misleading and/or deceiving someone, it will be subject to a prison sentence of 6 years and/or with a fine of Rp. 300,000,000. Thus, the TPKS Law does not list other alternative solutions for this crime.

Sexual violence can have a negative impact on victims, both mental, psychological, emotional, physiological, social impacts and economic losses that can make victims have difficulty sleeping and eating, feelings of shame, and so on. The violence that has been experienced makes victims become insecure, distrust of others, isolate

²¹ Voges, K. K., Palilingan, T. N., & Sumakul, T. F. (2022). PENEGAKAN HUKUM KEPADA PELAKU PELECEHAN SEKSUAL SECARA ONLINE. *Lex Crimen*, 11(4). <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/41998>

²² Monika. (2023). Perlindungan Hukum Kaum Perempuan Terhadap Kejahatan Cyber Harassment. *UNJA Journal of Legal Studies*, 1(1), 237–248. <https://online-journal.unja.ac.id/jols/article/view/24125>

and isolate, and have a strong urge to commit suicide²³. Remember that the consequences that have been caused by the perpetrator will not be able to erase and eliminate the losses experienced by the victim, thus making the victim need treatment such as rehabilitation which is useful for restoring the victim's condition as before.

4. Application of Restorative Justice in Electronic-based Sexual Violence Cases

Electronic-based sexual violence as described above, is based on Article 14 of the TPKS Law. Article 14 paragraph (1) regulates the form of electronic-based sexual violence with a maximum penalty of imprisonment of 4 years and/or a maximum fine of Rp. 200,000,000.00. Meanwhile, in paragraph (2) it regulates the form of electronic-based sexual violence carried out by threats, coercion, and misdirection. Of course, the sanctions given are more severe, namely a prison sentence of 6 years and/or a fine of Rp. 300,000,000.00. The concept of RJ at the level of investigation cannot be applied to cases of electronic-based sexual violence. This is due to public disapproval if cases such as sexual violence must be resolved with RJ, so that if they still want to be carried out, it has the potential to cause unrest. In fact, one of the material conditions stated by Article 5 of Perpol 8/2021 is that the community must accept if the case is resolved with RJ.

Meanwhile, based on article 5 Paragraph (1) of Perjak 15/2020, the type of electronic-based sexual violence carried out without threats, coercion, and misdirection can be resolved with RJ because of his criminal threat of less than five years. Then, the perpetrator did it for the first time and the victim's loss was less than Rp. 2,500,000.00. In addition to reviewing the requirements stated by Perjak 15/2020, perpetrators must also be willing to fulfill the rights of victims, which based on Article 1 Paragraph (16) of the TPKS Law consist of the rights of handling, protection, and recovery which can be implemented through the provision of compensation both in material and immaterial forms, return of victims' belongings, reimbursement of costs incurred because of this case, and repair of any damage incurred. Then, as the author explained earlier, the two parties must agree to make peace and be known to the public so that RJ can be implemented.

It can be seen from some regulations in Perpol and Perjak, RJ can be carried out in electronic-based sexual violence, but it should be understood that there are still other requirements such as whether the community accepts and does not worry if the case is resolved through RJ. Then about peace, reparation, and restoration of victims' rights. As long as all these conditions are met, then of course RJ can be applied in cases of electronic-based sexual violence with a record as long as it only meets the provisions of Article 14 paragraph (1) of the TPKS Law.

²³ Sesca, E. M. (2018). *POSTTRAUMATIC GROWTH PADA WANITA DEWASA AWAL KORBAN KEKERASAN SEKSUAL*.

However, if there are elements that cannot be met, then of course the case must continue according to existing criminal procedural law procedures.

E. Conclusions

The implementation of case resolution through RJ in Indonesia is regulated in each level of examination, namely in Investigation through Perpol 8/2021, concerning Handling Criminal Acts Based on Restorative Justice and in the Prosecution level regulated in Perjak 15/2020 concerning Termination of Prosecution Based on Restorative Justice. As for Perpol 8/2021 and Perjak 15/2020, there are conditions under which RJ can be applied, namely that in essence, criminal acts are not threatened with more than 5 years in prison, and do not cause unrest or rejection from the community.

Through this analysis, there is a possibility that RJ is applied both at the investigation and prosecution level as long as the article threatened to the perpetrator is Article 14 paragraph (1) of the TPKS Law, not article 14 paragraph (2) of the TPKS Law because the criteria for criminal threats under article 14 paragraph (1) of the TPKS Law are still under 5 years. But not only that, investigators and prosecutors must consider other things such as the community's response to the case, whether the community is restless and feels aggrieved. If the community is restless then of course RJ cannot be applied. In addition to the community, there are other conditions such as peace between perpetrators and victims, compensation or recovery of victims, and various other conditions from Perpol 8/2021 or Perjak 15/2020 must be met so that RJ can be applied to Electronic-based Sexual Violence Crimes with a record of meeting the provisions of Article 14 paragraph (1) of the TPKS Law.

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