



al-Ihkam: Jurnal Hukum dan Pranata Sosial, 19 (1), 2024: 53-77
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <https://doi.org/10.19105/al-ihkam.v19i1.8731>

Sextortion, Gender, and Digital Crime: A Socio-Legal Comparison between Positive and Islamic Law

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Article history: Received: January 06, 2024, Accepted: March 02, 2024,
Published: June 15, 2024

Abstract:

Digital sexual violence with the motive of extortion, known as sextortion, is one of the gender-based violence online types that is rampant in nowadays era of technology. The purpose of this study is to analyze (theoretically and empirically) the sextortion while offering progressive socio-legal interpretation solutions. This study is a normative and empirical legal research, employing statutory, case study, interviews, Focus Group Discussion (FGD), and *fiqh* approach. The data sources both primary and secondary, consist of legal materials, cases, real experiences, and sociological overviews on some relevant points. The data analysis technique used is content analysis,

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socio-legal explorations, and surveys, namely by examining documents in the form of legislation and related court decisions, expert judgments and empirical views of the purposive expert community. The results of the study show that positive law still has a dual attitude in which digital sexual violence with extortion motives is considered a crime on one hand but resulting in weak sanctions on another. Women are potentially oppressed and extorted, while their cultural defense mechanism is structurally weak. Meanwhile, in Islamic law, sextortion can be categorized as a part of *jarimah* (criminal act) with a punishment named *ta'zir*, in which the government becomes the one who determines the type of punishment. A progressive socio-legal interpretation is therefore necessary for that specific type of crime.

Keywords:

Digital Sexual violence; Sextortion; Positive Law; Islamic Law

Introduction

Nowadays, the increasing use of technology has a negative impact, one of which is the increase of violence against individuals through technology. When referring to a specific gender, this type of violence is called Online Gender-Based Violence (OGBV). This crime can happen to anyone, both men and women, but in many cases, the victims are women. Based on preliminary research, this crime can happen through cluster random sampling and in-depth interview: 75% of female and male students at The Graduate School of UIN Jakarta agreed with this statement. Field research, 15 to 28 Febr 2024. The National Commission on Violence Against Women (*Komnas Perempuan*), as quoted by medium, refers to OGBV as Cyber-Based Violence Against Women (CVAW). This term refers to the pressure on women who are often the victims, especially in pornographic contexts. In 2017, according to the annual report of *Komnas Perempuan*, there were 65 cases of violence against women through the online world. The following year, there was an increase to 97 cases. The types of crimes vary, including defamation, threats to distribute

private collections, online harassment, illegal content, revenge pornography, and online recruitment.¹

The number of online-based violence against women still increase in the next period. The biggest increase occurred during the pandemic. According to the Annual Report on Violence Against Women by *Komnas Perempuan*, there were 940 cases in 2020.² Similarly, in 2021, there was an 83% increase with a total of 1,721 cases.³ For a detail illustration, the increase can be seen in Figure 1.

Figure 1. Graph of OGBV from 2017-2021

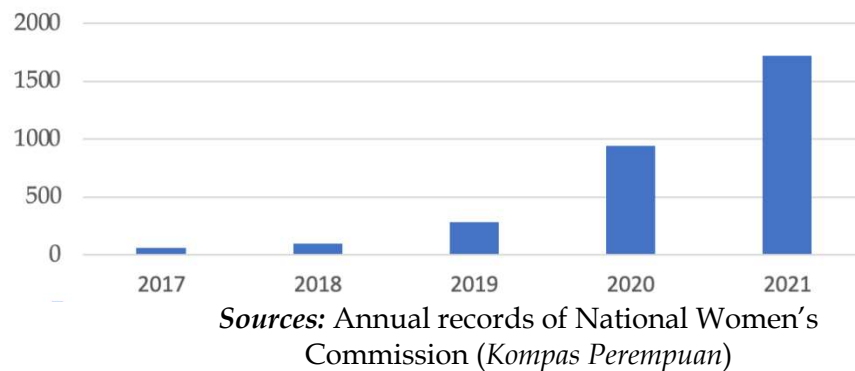


Figure 1 tells readers that the increasing cases reached more than 83% in 2020 to 2021. This indicates that serious development and

¹ Nendensan, "Mengenal Kekerasan Berbasis Gender Online," Medium, Accessed on May 30, 2021, <https://nendensan.medium.com/mengenal-kekerasan-berbasis-gender-online-kbgo-a4ec1bd95632>.

² Komnas Perempuan, "Perempuan dalam Himpitan Pandemi: Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak dan Keterbatasan Penanganan di Tengah Covid-19," Media Komnas Perempuan, 2021, <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2021-perempuan-dalam-himpitan-pandemi-lonjakan-kekerasan-seksual-kekerasan-siber-perkawinan-anak-dan-keterbatasan-penanganan-di-tengah-covid-19>.

³ Komnas Perempuan, "Bayang-Bayang Stagnansi: Daya Pencegahan dan Penanganan Berbanding Peningkatan Jumlah, Ragam dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan," Komnas Perempuan, 2022, <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2022-bayang-bayang-stagnansi-daya-pencegahan-dan-penanganan-berbanding-peningkatan-jumlah-ragam-dan-kompleksitas-kekerasan-berbasis-gender-terhadap-perempuan>.

heterogenous kinds of Online Gender-Based Violence (OGBV) really happened.

Komnas Perempuan recorded that the highest number of cases happened in 2021. It includes the personal realm namely sextortion.⁴ Sextortion can be defined as extortion carried out by using a victim's photo or video that contains pornography, whether obtained through hacking or given with consent but not intended for dissemination.⁵ Sextortion can be furthermore identified as a cybercrime that occurs when the perpetrator obtains or claims to have sensitive material from the victim through various means, such as through fake tricks, computer hacking, or hacking a webcam. The perpetrator threatens to distribute the material unless the victim is willing to provide other sexual photos, sexual services, or a certain amount of money.⁶

Therefore, a year later, the 2022 Annual Report on Violence Against Women by *Komnas Perempuan* used the term Gender-Based Cyber Violence (GBCV) and enlisted sextortion as a part of it. It consists of 13 types including Cyber Grooming, Cyber Hacking, Cyber Harassment, Cyber Recruitment, Cyber Surveillance, Illegal Content, Malicious Distribution, Morphing, Online Defamation, Revenge Porn, Sexting, Sextortion, and Voyeurism.

It comes as no wonder, therefore, to find some previous relevant studies on the theme. Julastri Dwi Rizki and Devi Yulida in their work titled "The Application of Law Using the Extensive Method of Legal Construction to Sextortion Perpetrators",⁷ reveal that besides pornography, researchers tend to place sextortion, especially against children, as a form of exploitation. There is no specific regulation that governs sextortion against children. However, the

⁴ Komnas Perempuan.

⁵ Fikri Chandra Permana, "Pertanggungjawaban Pidana Pelaku 'Sektorsi' dalam Kekerasan Berbasis Gender Online (KBGO)," *Jurist-Diction* 5, no. 3 (2022): 883-98, <https://doi.org/10.20473/jd.v5i3.35776>.

⁶ Justin W. Patchin and Sameer Hinduja, "Sextortion Among Adolescents: Results From a National Survey of U.S. Youth," *Sexual Abuse: Journal of Research and Treatment* 32, no. 1 (2020): 30-54, <https://doi.org/10.1177/1079063218800469>; Alessandra Carlton, "Sextortion: The Hybrid 'Cyber-Sex' Crime," *NCJL & Tech* 21, no. 3 (2020): 177-213, <https://scholarship.law.unc.edu/ncjolt/vol21/iss3/5>.

⁷ Julastri Dwi Rizki and Devi Yulida, "Penerapan Hukum Menggunakan Metode Ekstensif Konstruktif Hukum Kepada Pelaku Kejahatan Sextortion," *Al-Hakam Islamic Law & Contemporary Issues* 1, no. 1 (2020): 7-10, <https://ejournal2.undip.ac.id/index.php/ilj/article/view/7515/3862>.

applicable legal regulations are Law No. 44 of 2008 and Law No. 17 of 2016, which is the Second Amendment to Law No. 23 of 2002 on Child Protection. To effectively adjust the applicable regulations, Rizki and Yulida stated the need to conduct legal interpretation using the extensive method of legal construction.

The legal research on sextortion is also conducted by Jordy Herry Christian in his work "Sextortion; Online Gender-Based Violence in the Legal Paradigm in Indonesia".⁸ By analyzing it from a normative juridical perspective, Christian found that this type of crime can be prosecuted under the Indonesian Criminal Code (KUHP), the Pornography Law, and the ITE Law (Information and Electronic Transactions Law). Additionally, the study also examines the forms of victim protection as mandated by the Witness and Victim Protection Law.

This research is different from previous research in several ways. It includes the Sexual Violence Criminal Law (*Undang-undang Tindak Pidana Kekerasan Seksual/UU TPKS*) as a legal basis. In addition, empirical cases and Islamic law analysis are also presented, considering that most of the Indonesian society is Muslim, and therefore legal explanations based on sociological data as well as religious inspired interpretation are needed.

This study argues that the regulation related to sextortion is insufficient. Progressive as well as integrated socio-legal interpretation must be made. The spirit of Islamic law potentially contributes to empowering legal substance as well as progressive interpretation. Based on preliminary research, this crime can happen through cluster random sampling and in-depth-interview: 89% of women students in The Graduate School of UIN Jakarta agreed to this progressive interpretation. Field research, 15 to 28 Febr 2024. To be more focused on the issue, some research questions are formulated: How is sextortion from its empirical cases and law enforcement in the

⁸ Jordy Herry Christian, "Sekstorsi: Kekerasan Berbasis Gender Online dalam Paradigma Hukum Indonesia," *Binamulia Hukum* 9, no. 1 (2023): 83-92, <https://doi.org/10.37893/jbh.v9i1.364>; Sitti Marwah, "Gender Progressive Teaching in Premarital Course Study on Islamic Marriage Guidance Books for Prospective Muslim Couples," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2022): 103-26, <https://doi.org/10.14421/ahwal.2022.15106>; Jamil Ddamulira Mujuzi, "The Conundrum of Intestate Succession for Muslims in Uganda: Qadhis Court, Women's Rights, and Islamic Inheritance Law Issues," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (2023): 43-68, <https://doi.org/10.14421/ahwal.2023.16103>.

field? What are the relevant regulations in both Indonesian and Islamic Law on sextortion? How far progressive and integrative interpretation of the sextortion sanctions can be redefined? In the end, the answers potentially contribute to building progressive legal interpretation solutions toward effective law enforcement. This last point is the goal of this research.

Methods

This is a normative and empirical legal research (mixed method). The social significance of the research is shown by the result of empirical field research and compiled data from interviews and Focus Group Discussions (FGD). From 15 to 28 February 2024, a Focus Group Discussion and in-depth interviews were conducted. In addition to a combination of purposive sampling, accidental and snowball methods, a questionnaire was also distributed among lecturers as well as students of *Sekolah Pascasarjana* (Post Graduate Program), Syarif Hidayatullah State Islamic University due to the reachability and availability.

It furthermore employs a combination of the statute and case approach of court decisions with the *fiqh* (Islamic jurisprudence) methodology and socio-legal surveys on the root of the problem and empirical evaluation of law enforcement. In the end, the discussion focuses on *fiqh al-jināyāt* (Islamic criminal law) which incorporates *al-qawā'id al-uṣūliyyah* (fundamental maxims),⁹ and *al-qawā'id al-fiqhiyyah* (jurisprudential maxims)¹⁰ as well as socio-legal research conclusions. In short, these mixed approaches serve as analytical tools, facilitating comparison, synchronization, extraction, and conclusion by comparing the positive and Islamic law and exploring socio-legal data and survey, drawing the main points and concluding possible integration (of Islamic and positive enactment).

⁹ M Noor Harisudin, "Formulasi Baru Epistemologi Fiqh Perempuan," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 10, no. 2 (2016): 393–408, <https://doi.org/10.19105/al-lhkam.v10i2.735>.

¹⁰ Muhammad Taufiki, Universitas Islam, and Negeri Syarif, "The Use of Maxims (*Al-Qawā'id Al-Uṣūliyyah Wa Al-Fiqhiyyah*) in Legal Argumentation of Sharia Economic Court Decisions in Indonesia," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 1 (2022): 165–88, <https://doi.org/https://doi.org/10.19105/al-lhkam.v17i1.6070>.

Result and Discussion

Sextortion Empirical Cases and the Question of Law Enforcement

Sextortion is a term that comes from the English word. It stems from a combination of the words "sexual" and "extortion" which means sexual extortion.¹¹ This word has not been included in the latest entry of the Indonesian Dictionary. However, some Indonesian language literature has used the word "*sektorsi*" in describing one form of online gender-based violence. Below are some samples of sextortion cases in Indonesia.

The first is a case number 387/Pid.B/2019/PN.Jmr. The case started with the victim getting to know the defendant through a phone number using a pseudonym and claiming to be an Indonesian national military member serving in Jambi, Jambi province. After getting close, the defendant asked the victim to send nude photos with the persuasion that the defendant would marry the victim after being relocated to Jember, so the victim complied with the defendant's wishes.

After the victim sent the nude photos, the defendant asked the victim to send 15,000,000 IDR for relocation costs to Jember. The victim complied with the defendant's wishes by sending money to the defendant's banking account. However, because the defendant did not relocate to Jember, the victim finally deleted and blocked the defendant's phone number.

A few days later, the defendant called the victim again and revealed his identity. The defendant then threatened to spread the nude photos that had been previously sent. Feeling scared, the victim agreed to again approve the defendant's request by sending money more and more to 174 times with a total value of Rp. 51,750,000.

¹¹ Roberta Liggett O'Malley and Karen M. Holt, "Cyber Sextortion: An Exploratory Analysis of Different Perpetrators Engaging in a Similar Crime," *Journal of Interpersonal Violence* 37, no. 1-2 (2022): 258-83, <https://doi.org/10.1177/0886260520909186>; Ellen Kusuma and Justicia Avila Veda, (*Diancam*) *Konten Intim Disebar, Aku Harus Bagaimana?* (SAFEnet dan Kolektif Advokat Untuk Keadilan Gender, 2020); Henny Yuningsih et al., "Ratio Legis of Chemical Castration to the Perpetrators of Sexual Violence against Children," *Sriwijaya Law Review* 4, no. 2 (2020): 285-303, <https://doi.org/10.28946/slrev.Vol4.Iss2.432.pp285-303>; Nur Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7, no. 1 (2023): 87-104, <https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104>.

Since the victim did not want to send money anymore, the defendant finally created a fake Facebook account that contained vulgar photos of the victim and sent them to the victim's colleagues. In this case, the panel of judges considered that the defendant was proven guilty beyond a reasonable doubt of committing a criminal act that violated the article, with a sentence of imprisonment for 1 year and 10 months and a fine of Rp. 300,000 or 1 month of detention.

The second sextortion case that has been decided by the court is the case with verdict number 217/Pid.B/2018/PN Bna. This case began when the victim and the perpetrator were in a romantic relationship while in school. During their relationship, at the request of the perpetrator, the victim sent vulgar photos of herself. Their romantic relationship lasted for 1 year and they did not have any contact for 2 years until the case happened.

In this case, the perpetrator repeatedly sent WhatsApp messages to the victim containing extortion. The perpetrator demanded the victim send him IDR 3.4 million. If the demand was not met, the perpetrator threatened to distribute the victim's vulgar photo on social media and harm the victim's family.

Because of the perpetrator's threat, the victim eventually decided to fulfill the perpetrator's demand. They agreed to meet at AAN 2 Coffee Shop in Gampong Lhong Raya. After the victim gave the requested money to the perpetrator, the victim asked for the photo to be deleted. However, the perpetrator refused, leading to a commotion at the coffee shop, and the police who happened to be around the area took the perpetrator to the Banda Raya police station.

The public prosecutor in this case charged the perpetrator with extortion and threats as regulated in Article 368 paragraph (1) of the Criminal Code (KUHP). The requested sentence was 3 years imprisonment. The panel of judges in this case found the perpetrator guilty beyond a reasonable doubt of the crimes charged. The perpetrator was sentenced to 2 years imprisonment.

The third case came with verdict number 1168/Pid.Sus/2020/Pn Pbr. This case began with the victim and perpetrator knowing each other through a dating application. They began a romantic relationship, once met at a hotel, and had sexual intercourse. During the intercourse, the perpetrator recorded the scene. Despite being initially forbidden, he insisted on doing so for personal collection. Additionally, while in a relationship, the

perpetrator and victim also engaged in sexual video calls (VCS), and without the victim's concern, the perpetrator took screenshots of the activity.

Subsequently, the perpetrator asked the victim to have sexual intercourse again but the victim refused it. From that point on, the perpetrator began to blackmail the victim with threats that the victim's photos would be distributed publicly. The victim eventually agreed on the request due to feeling threatened. Not only that, she also handed over a sum of money demanded by the perpetrator. At the time of giving the money, the perpetrator allowed the victim to delete the video and photos. However, on the way home, the perpetrator contacted the victim texting her "Do you think I'm stupid?" showing her that he still kept the photos and videos on other media. The victim finally decided to report to the authorities.

In this case, the prosecutor demanded that the perpetrator be sentenced to 1 year and 10 months in prison, as well as a fine of IDR 100,000,000 or an alternative of 6 months in prison. The panel of judges found the defendant guilty. The three cases can be summarized in Table 1.

Table 1. Sextortion Cases

Case Number	Situation	Threat	Request/Extortion
387/Pid.B/2019/PN.J mr	A male and a female got dating and romantic interrelationships via social media. The male said his commitment to marry her soon	The male asked for romantic nude digital photos and videos of the girl	The male has a digital archive of the nude photos and videos that he exported through them. The girl has paid IDR 51.750.000, -
217/Pid.B/2018/PN.B na	Male and female real love relationship. They have photos and videos of the love affairs.	The male said that the archives would be stored as individual documents.	Two years later, the relationship was broken. The male extorted through the documents while asking for IDR 3.400.000, -
1168/Pid.Sus/2020/P N.Pbr	Male and female have the agreement to have sexual intercourse.	The male used video devices and recorded the scene	After a few months, he extorted by using the documents for an amount of money

Table 1 implies that digital instruments can serve as very easy tools for doing crime, manipulation, and psychological intimidation. The process of digitalization can be a very private affair. Thus, it is not easy to be detected by the law. Initially, the case might be based on a consensual agreement between males and females. It contributes to the complexity of sextortion. The table furthermore depicts that in many cases of sextortion, women are the most potential victims. This is in line with a survey (by distributing a questionnaire) result preceded by cluster sampling (purposive) and interviews (Field research, 15 to 28 Feb 2024: It is done through non-probability sampling).

Table 1 also shows that crime can happen to anyone, both men and women. However, most cases show that women are the victims. This strongly correlates to the fact that society is still bound by a patriarchal mindset that places women as inferior beings beneath men. This is evident in the prevalence of negative stigmas against women and the normalization of sexual harassment behaviors. The lack of education and understanding about the harmful impacts of these stigmas and harassment exacerbates the situation, making women increasingly vulnerable to exploitation and abuse.¹²

In patriarchal countries like Indonesia, public spaces, both offline and online, are dominated by men. This creates opportunities for certain individuals, with political or economic interests, to exploit the situation and become sponsors. An informant said that:

“Furthermore, the deeply rooted patriarchal culture in society, especially at the grassroots level, exacerbates this situation, particularly for women”.¹³

Based on that statement, it can be seen that the situation has also led to difficulty in providing effective sanctions and punishments to deter perpetrators of digital extortion. With the capabilities of information technology, it should be possible to trace further. An example is the case that a husband cheats and betrays (*selingkuh*) and then the video is spread by his wife. The husband sues the wife and she suddenly becomes a victim. Due to this sort of carelessness, the law is unfair to women, and the complaints are considered as

¹² Himam Afghani, Student, *Interview*, February 20, 2024.

¹³ Iik Arifin M. Noor, senior lecturer, *Interview*, February 20, 2024.

defamation. The issue now is whether our legal framework is gender-friendly or not, Prof. Iik Arifin, furthermore, stated:

“Not only the laws but also all legal officers, from judges to prosecutors, do they have a gender-friendly perspective? Because if not, women who are initially victims will certainly become perpetrators. That is the key,” another informant mentioned.¹⁴

It is believed that in handling cases of online-based sexual extortion, the government still lacks adequate prevention efforts. The current approach appears to be reactive, focusing on post-incident actions such as legal demands and the enforcement of related articles. Existing prevention efforts, such as socialization, are considered suboptimal and have not reached all layers of society. A student in PPS UIN Syarif Hidayatullah said:

“This has resulted in a lack of comprehensive dissemination of information regarding the modus operandi and dangers of online sexual extortion, leading to a lack of full understanding and anticipation of various forms of this crime within the community”, commented another informant.¹⁵

Likely, although the legal framework related to online sexual extortion is available, this phenomenon still occurs widely and is difficult to control in the online realm. Victims often hesitate to report due to various factors such as fear, negative stigma, and lack of support. Even when victims bravely speak out and seek justice, they still face various obstacles. Adequate financial support and legal assistance are often unavailable, and victims are often judged by society.¹⁶

This situation is even more complicated for individuals from lower to middle economic backgrounds who may have limited access and resources to advocate for their rights. Although the law is formally available, its consistent and uniform application remains a significant challenge. Another student also argued that:

¹⁴ M. Noor, *Interview*.

¹⁵ Devira Arini, student, *Interview*, February 21, 2024.

¹⁶ Maswani, lecturer, *Interview*, February 21, 2024.

“Strong support from various parties, both in terms of financial and legal assistance, is needed to help victims obtain justice and prevent future occurrences of online sexual harassment”.¹⁷

Although the available legal framework already refers to best practices worldwide, its effectiveness in addressing various issues is mentioned to be still relatively low. The implementation of the law in the field faces various obstacles. It is important to remember that criticism of the law enforcers, such as the police, should be done constructively and considering various factors that underlie their performance.

“An ideal law enforcement system requires a balance between firmness and accountability, ensuring the well-being and professionalism of law enforcers. This situation reflects the complexity of democracy, where effectively and fairly enforcing the law is one of the main challenges faced by our country”.¹⁸

The statement shows that sextortion regulation requires comprehensive enforcement, including prevention, case follow-up, and socialization programs. Professional review and evaluation of laws are essential to anticipate occurrences, protect victims, and clarify case confusion.

Sextortion in Indonesian Positive and Islamic Law

Sexual extortion is fundamentally contrary to the constitutional mandate of protecting an individual's right to privacy as stipulated in Article 28G (1) of the 1945 Indonesian Constitution. In Article 28G paragraph (1) UUD 1945, stated "Every person has the right to the protection of personal self, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from the threat of fear of doing or not doing something that is a human right. When examined in substance, sexual extortion has at least two elements: the threat of spreading intimate or pornographic content and coercion. The following are applicable laws and regulations relevant to the action:

¹⁷ Medina Munadi, student, *Interview*, February 21, 2024.

¹⁸ M. Noor, senior lecturer, *Interview*, February 20, 2024.

Firstly, the Indonesian Criminal Code (KUHP). As the *lex generalis* of criminal law in Indonesia, the KUHP regulates at least the crime of coercion, which is a substantive part of sexual extortion. According to Jordy Herry Christian, the crime of sextortion, which essentially involves extortion, violates formal and material law. This is because the crime violates both the delict and the principles of decency in society.¹⁹ Sextortion involves threatening to expose intimate content, constituting non-physical violence. Article 369 of the Criminal Code imposes a maximum 4-year prison term for such acts.

Secondly, Law Number 44 of 2008 concerning Pornography. A sextortion perpetrator's action which disseminates photos, videos, or similar documents containing pornographic material, according to this law, violates Article (4) paragraph (1). The sanctions that can be imposed are explained in Article 29 with a minimum prison sentence of 6 months and a maximum of 12 years. In addition, a minimum fine of IDR 250,000,000 and a maximum of IDR 6,000,000,000 can also be imposed.

Thirdly, Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions which criminalizes sextortion that involves pornography and extortion. *Fourthly*, Law No. 12 of 2022 Concerning Sexual Violence Crimes. The rule on sextortion is described at least in Article 14 paragraph 1.

The mentioned regulations imply that digital sextortion is not considered clearly as a serious crime for violating the principles of protecting human dignity or the violation of human rights. To enforce the law, in fact, it needs extra efforts to extend and construct progressive interpretation by referring to the inner message, not only going through a textual approach.

Meanwhile, in the Islamic tradition, this type of crime is called *اِبتِزَارٌ* (*ibtizāz*/extortion). When facilitated by technology, it is often

¹⁹ Carlton, "Sextortion: The Hybrid 'Cyber-Sex' Crime"; A. B. Syamsuddin et al., "Parenting Children in A Religious Perspective of Fishermen's Families In Sinjai, Indonesia: Structural Functionalism Approach," *Samarah* 8, no. 1 (2024): 257-80, <https://doi.org/10.22373/sjhk.v8i1.17854>; Muhammad Chairul Huda et al., "Nonmarital Sex Rituals on Mount Kemukus (Study of Legal Culture and Islamic Law Perspective)," *Samarah* 6, no. 1 (2022): 289-309, <https://doi.org/10.22373/SJHK.V6I1.9130>.

referred to as *الابتزاز الإلكتروني* (*al-ibtizāz al-elektruniy/digital extortion*).²⁰ Etymologically, *ibtizāz* comes from the word *bazza* which can mean to rob or take by force, as in the Arabic saying " *مَنْ عَزَّ بَزَّ أَيُّ* " *مَنْ غَلَبَ سَلَبَ*. *Salaba* can mean to seize, rob, snatch, steal, hijack usurp,²¹ disturb, vandalize, or threaten.²² In addition, *bazza* can also mean *أَخَذُ الشَّيْءَ بِجَفَاءٍ وَقَهْرٍ* (to take something by force).²³

Terminologically, according to Nurah binti Abdullah in her book *Ibtizāz al-Fatayāt; Ahkāmuhu wa 'Uqūbatuhu fi Fiqh al-Islāmī* is;²⁴

مَحَاوَلَةٌ تَحْصِيلِ الْمَكْسَبِ مَادِيَّةٍ، أَوْ مَعْنَوِيَّةٍ، أَوْ جَنْسِيَّةٍ مِنْ فِتَاةٍ بِلَا كَرَاهٍ، أَوْ التَّهْدِيدِ بِفَضْحِ سِرٍّ مِنْ أَسْرَارِهَا، أَوْ نَشْرِ صُورَةٍ مِنْ صُورِهَا تُؤَدِّي إِلَى تَحْقِيرِهَا عِنْدَ أَهْلِهَا وَاجْتِمَاعِهَا

"The act of attempting to gain material, immaterial, or sexual benefits from a young woman through coercion, threats to reveal her secrets, or spreading photos that can embarrass her in front of her family and society." In other words, it is defined as coercing someone to commit indecent acts, such as engaging in sexual activities or paying a certain amount of money with the threat of revealing something that should not be made public is an act that goes beyond boundaries.

From the perspective of *Maqāsid ash-Sharī'ah*, the purpose of enacting any laws is the benefit (*maṣlaḥah*) of God's servants. The first and foremost category is *maṣlaḥah ḍarūriyyāt* (primary benefits) which

²⁰ Yasmin Saad, "Apa Hukuman Pemasaran Elektronik dalam Hukum Mesir?," *Shorouk News*, 2021, <https://www.shorouknews.com/news/view.aspx?cdate=01122021&id=b63927b8-4aef-4f19-8717-7cbf6552db7b>.

²¹ Ahmad Warson Munawwir, *Kamus Al Munawwir: Arab Indonesia Terlengkap, Cet Ke-25* (Surabaya: Pustaka progressif, 2002), 1076-77.

²² Adib Bisri and Munawwir Al-Bisri, *Kamus Arab - Indonesia Indonesia - Arab* (Surabaya: Pustaka progressif, 1999).

²³ Muhammad Murtadho al-Husaini Al-Zubaidi, *Tāj Al- 'Arūs Min Jawāhir Al-Qāmūs* (Kuwait: Maṭba'ah Hukūmah, 1988).

²⁴ Nurah bintu Abdullah, *Ibtizāz Al-Fatayāt: Ahkāmuhu Wa Uqūbatuhu Fī Fiqh Al-Islāmī* (Riyadh: Kuliyyat al-Syari'ah Jāmi'ah al-Imam Muhammad bin Sa'ud al-Islamiyah, 2001).

has five elements: the maintenance of religion, life, mind, offspring, and wealth.²⁵ The crime of sextortion accompanied by a threat to pay a certain amount of money certainly violates the aspect of preserving property (*ḥifẓ al-māl*) in the Islamic legal objectives. Meanwhile, if the threat used is a sexual one, such as the victim being forced to have sexual intercourse with a guarantee that the perpetrator will secure such a digital content (not circulated on social media), this violates the aspect of preserving honor and lineage (*ḥifẓ al-'irdh and ḥifẓ al-nasl*). Furthermore, if the victim becomes depressed to the point of despair, which can threaten their mental health or even life, this violates the aspect of preserving life (*ḥifẓ al-nafs*). In short word, no matter how each case of sextortion takes place, it likely and potentially ruins one or some aspects of that needs for protection.

In the same vein, from the criminal (*jarimah*) perspective, digital sexual violence in the form of sextortion is a prohibited action that surpasses the boundaries of sharia. Although there is no detailed text that discusses this criminal punishment, it is mentioned that the appropriate one is *ta'zīr*.²⁶ As mentioned by Nurah, it includes imprisonment, fines, destruction of photos/images, recording/filming equipment, electronic devices used in the crime, and also the destruction of the perpetrator's communication devices.²⁷ This makes sense considering that in the category of *ta'zīr*, authority is given to judges or the government to achieve the goals of punishment and to achieve public interest.²⁸ It is important, therefore, to formulate a progressive and integrative interpretation after comparing both laws as will be discussed at the next part.

²⁵ Mohammad Kosim, Faqihul Muqoddam, and Faidol Mubarak, "Al-'Unfu Fī Al-Tarbiyah Min Mandzūr Al-Tashrī' Al-Indûnîsî Wa Al-Sharī'ah Al-Islâmiyah," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022): 578–610, <https://doi.org/http://doi.org/10.19105/al-Ihkam.v17i2.6170> Al-'Unfu; Salman Abdul Muthalib et al., "Changes in Congregational Prayer Practices During the Covid-19 Pandemic in Aceh from *Maqâsid ash-Sharī'ah* Perspective," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 16, no. 2 (2021): 421–49, <https://doi.org/10.19105/AL-LHKAM.V16I2.5250>.

²⁶ Abdullah, *Ibtizâz Al-Fatayât: Ahkâmuhu Wa Uqûbatuhu Fī Fiqh Al-Islâmy*, 39.

²⁷ Abdullah, 44.

²⁸ Alfany Arga Alil Fiqri and Dwi Retno Widiyanti, "The Influence of Religiosity , Age , and Income on Willingness Volunteer for Indonesian Philanthropic Institutions," *Review of Islamic Economics and Finance* 6, no. 2 (2023): 155–70, <https://doi.org/https://doi.org/10.17509/rief.v6i2>.

From Theory toward Progressive and Integrative Interpretation: Comparison and Legal Construction

In the context of sextortion, there is assumed potential for integrating Islamic law with positive law according to the following points. *Firstly*, there was a statement indicating optimism about the contribution of Islamic law to the perfection of international law, particularly in addressing issues related to technology and the public sphere, especially online media.²⁹ *Secondly*, there were discussions on how social institutions, including religious institutions, can play a role in providing understanding and education about social and religious values that should govern the relationships between men and women and prevent violence.³⁰ *Thirdly*, there was an emphasis on the importance of more progressive legal interpretations and collaboration between state institutions, non-governmental organizations (LSM), and legal activists to formulate how religion can protect women.³¹ *Fourthly*, they viewed that existing laws are not yet sufficiently effective and that many discourses have not been translated into concrete actions.³² *Lastly*, there found suggestions to formulate laws on those who perpetrate violence in the public sphere of social media, highlighting the need to integrate Islamic law with positive law in a more contemporary framework, implying a progressive interpretation of the issue³³ as can be seen in Figure 2.

²⁹ Iik Arifin M. Noor, senior lecturer, *Interview*, February 20, 2024.

³⁰ Maisaroh, Student, *Interview*, February 21, 2024.

³¹ Rizqi Handayani, Student, *Interview*, February 19, 2024.

³² Devira, Student, *Interview*, February 21, 2024.

³³ Nadia, Student, *Interview*, February 21, 2024.

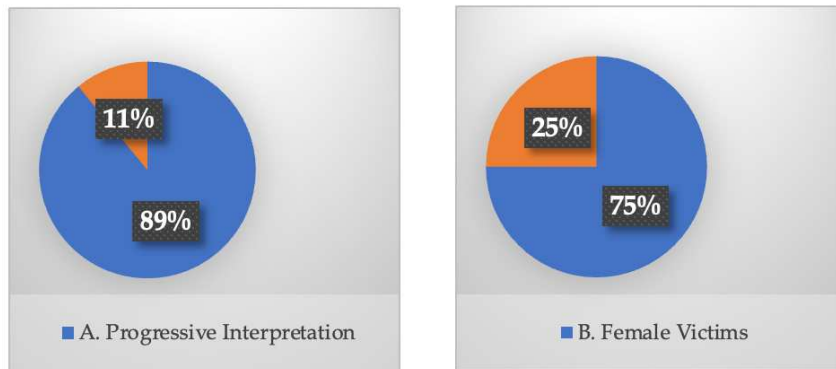


Figure 2. Students' Responds to Online Gender-Based Violence (OGBV)

Figure 2 indicates informant assumptions about the potential of Islamic law to contribute to legal empowerment through progressive interpretation. Progressive interpretation involves expanding legal frameworks to capture the spirit of the law, while integrative interpretation seeks to identify common legal elements, especially between positive law and Islamic law. Building on these ideas, figure 2 presents rules related to sextortion in both legal systems.

Pie diagram A illustrates that 89% of respondents support the progressive integration of Islamic law with positive law to address social media violence, indicating a strong consensus for a modern and flexible legal approach. Conversely, only 11% oppose this approach. This data underscores the need for a contemporary legal framework to combat sexual violence on social media effectively.

In Pie diagram B, it's revealed that 75% of social media violence victims are women, emphasizing the significant impact on women and the necessity for gender-sensitive legal frameworks. This supports the argument for inclusive and fair policies and laws that prioritize the protection of women's rights.

Overall, the data from both diagrams highlight widespread support for legal reforms that blend principles of Islamic law with positive law in a progressive manner. Additionally, the emphasis on protecting female victims underscores the importance of a holistic and gender-sensitive approach to policymaking.

Table 2. Regulation of Sextortion in Positive and Islamic Law

Positive Law		Islamic Law	
Relevant Rules	Criminal Sanctions	Source of Law Determination	Criminal Sanctions
Article 386 of the Criminal Code (KUHP) (Coercion by violence or threats of violence)	Maximum imprisonment of 9 months	al-Qur'an; al-Baqarah; 190	Ta'zīr
Article 369 of the Indonesian Criminal Code (KUHP) (Extortion with Threats of Defamation)	Maximum imprisonment of 4 months"	Hadith; <ul style="list-style-type: none"> • يَا عِبَادِي إِنِّي حَرَمْتُ الظُّلْمَ • لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَرُوعَ مُسْلِمًا • فَإِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ • لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا يَطِيبَ نَفْسَهُ 	
Article 4 paragraph 1 of the Pornography Law (Prohibition of producing/distributing pornographic content)	Minimum 6 months and maximum 12 years of imprisonment and/or a minimum fine of IDR 250,000,000. Maximum IDR 6.000.000.000	Al-Qā'idah al-Uṣūliyyah; <p>الْأَصْلُ فِي النَّهْيِ لِلتَّحْرِيمِ</p>	
Article 27 paragraph (1) of the ITE Law (Prohibition of distributing contents that violate decency)	Maximum imprisonment of 6 years and/or a maximum fine of IDR 1,000,000,000.	Al-Qā'idah al-Fiqhiyyah; <p>لَا ضَرَرَ وَلَا ضِرَارَ</p>	
Article 27 paragraph (4) of the ITE Law (Prohibition of distributing electronic information/documents that contain extortion and/or threats)	Maximum imprisonment of 6 years and/or a maximum fine of IDR 1,000,000,000.	Maqāṣid ash-Sharī'ah; <p>Contrary to aspects of maintaining honor and lineage (ḥifẓ al-'irdh and ḥifẓ al-nasl) and protecting the soul (ḥifẓ al-nafs).</p>	

Article 14 paragraph (2) of the TPKS Law (Prohibition of distributing sexual content with extortion or deception motives)	Maximum imprisonment of 6 years and/or a maximum fine of IDR 300,000,000.
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Table 2 shows that various rules above can be used to ensnare sextortion. However, the use of different rules can provide a great opportunity for disparities in sentencing. Disparity in sentencing occurs when the sentences are not the same for the same crime, or for crimes whose dangerous nature can be compared or similar without a clear justification.³⁴ In Indonesian law, based on the principle of derogation,³⁵ the *Tindak Pidana Kekerasan Seksual* (Crime of Sexual Violence) Law as the newest regulation governing digital-based sexual crimes can be used for law enforcement.³⁶ Whereas in Islamic law, with the categorization of *ta'zīr* punishment, the delegation of regulatory authority is left to *ulil amri* or the ruler. In this case, it will certainly be possible to conform to digital-based sexual crime arrangements from the two legal systems, namely Islamic law and positive law. In practice, details on three sextortion cases that have been decided by the court as mentioned above are presented in Table 3.

³⁴ Nimerodi Gulo, "Disparitas dalam Penjatuhan Pidana," *Masalah-Masalah Hukum* 47, no. 3 (2018): 215, <https://doi.org/10.14710/mmh.47.3.2018.215-227>.

³⁵ Shinta Agustina, "Implementasi Asas Lex Specialis Derogat Legi Generali dalam Sistem Peradilan Pidana," *Masalah-Masalah Hukum* 44, no. 4 (2015): 503, <https://doi.org/10.14710/mmh.44.4.2015.503-510>.

³⁶ Kimberly Natali, "Bisakah Hukum di Indonesia Memberikan Perlindungan Bagi Korban Revenge Porn?," *Kumparan*, Accessed January 24, 2022, <https://kumparan.com/kimberlynataliboas/bisakah-hukum-di-indonesia-memberikan-perlindungan-bagi-korban-revenge-porn-1zPFmv2WGng>.

Table 3. Comparison of Decisions on Sextortion Cases

No. Case	Indictment	Prosecutor's demands	Verdict
217/Pid.B/2018/PN Bna	Article 368 paragraph (1)	Imprisonment 3 years	Imprisonment 2 years
387/Pid.B/2019/PN Jmr	First, Article 4 paragraph (1) jo. Article 29 UU Pornografi. Second, article 27 paragraph (1) jo. Article 45 paragraph (1) UU ITE.	2 years imprisonment and a fine of IDR 500,000 subsided 2 months confinement	The second charge, imprisonment of 1 year and 10 months & a fine of IDR 300,000
1168/Pid.Sus/2020/PN Pbr	First, Article 27 paragraph (1) jo. Article 45 paragraph (1) UU ITE. Second, Article 45 paragraph (4) jo. Article 27 paragraph (1). Third, Article 45 paragraph (4) jo. Article 27 paragraph (1) jo. Article 53 paragraph (1) KUHP. Fourth, Article 369 paragraph (1) KUHP	1 year and 10 months and a fine of IDR 100,000 subsider 6 months imprisonment	The first charge, imprisonment of 1 year and 8 months, and a fine of IDR 100,000,000 subsider imprisonment of 6 months.

Table 3 shows that from the three cases as samples of this research, the law enforcers use different rules in ensnaring sextortion offenders. In the first case, the judge used Article 368 of the Criminal Code regarding extortion. Meanwhile, for the second and third cases, the judge used the ITE Law Article 27 paragraph (1) related to the prohibition of disseminating electronic documents that have a moral content although the imprisonment duration is different due to diverse levels of crime.

In addition to material extortion, in cases no.387 and 1168, the perpetrator also committed sexual extortion. In forced circumstances, the victims serve the perpetrators. Nonetheless, the judge only imposed a 2-year prison sentence for case 217 and 1 year and 10 months for case 387 against the offender. This punishment still seems too low, particularly when compared with a rape case in which the perpetrator can be threatened with a higher sentence of 12 years in prison as per Article 285 of the Criminal Code.

The data presented above emphasizes the importance of integrating principles of Islamic law with positive law progressively and contemporarily, as reflected in the findings and cases above.

Progressive interpretation of the law plays a crucial role in expanding legal constructions to reflect the spirit of the law relevant to the times. Additionally, the data underscores the importance of adopting a more holistic and gender-sensitive approach in policymaking, particularly in addressing sexual violence on social media. This holistic approach is vital in ensuring that legal reforms adequately protect vulnerable groups, such as female victims of online-based sexual violence.

Conclusion

From the literature and normative discourse, it can be concluded that sextortion, as a form of gender-based online violence motivated by extortion, is a rampant issue in the technological era. The existing regulations inadequately anticipate the future and exhibit weak gender sensitivity, leading to discriminatory decisions. In comparison to Islamic Criminal Law, a progressive interpretation is needed with a focus on future orientation and gender sensitivity. Empirical research indicates the ineffectiveness of law enforcement concerning online sexual harassment across various domains, including the judiciary. The stigma of blaming victims, such as "Why did the victim allow themselves to be harassed," persists not only within the judiciary but also in academic environments. This situation worsens due to the societal normalization of sexual harassment, exacerbated by erroneous dogma regarding women's purportedly greater sexual desire. Clear and stringent regulations are necessary to address these violations and eliminate the stigmatization of sexual harassment victims. Effective and fair law enforcement is crucial to tackling this issue. Although the phrase "integration of Islamic law and positive law" is not explicitly mentioned in positive regulations, the existing framework for integration can serve as a basis for establishing a more comprehensive and responsive legal system that effectively addresses emerging social and technological issues. A recommendation for further research is to delve deeper into the impacts of integrating Islamic and positive law and to further explore the social and cultural factors contributing to the injustice in law enforcement related to online sexual harassment. These latter points represent the limitations and shortcomings of this study.

Acknowledgment

The authors thank for the support of all staff and the students of Post Graduate Programs (*Sekolah Pascasarjana*) The State Islamic University Syarif Hidayatullah Jakarta and The Indonesia Endowment Fund for Education Agency (*LPDP-RI*). The research is independent. No conflict of interest. The authors are responsible for the content.

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