



A CRITIQUE OF LEGAL FORMALISM IN HANDLING CYBER SEXUAL HARASSMENT: EFFORTS TO REALIZE SUBSTANTIVE JUSTICE THROUGH A GENDER LENS AND CRITICAL EDUCATION

Dian Paula April Juwan
Universitas Gadjah Mada, Yogyakarta, Indonesia
dianjuwan11@gmail.com

Rr. Siti Murtiningsih
Universitas Gadjah Mada, Yogyakarta, Indonesia
stmurti@ugm.ac.id

Sonjoruri Budiani Trisakti
Universitas Gadjah Mada, Yogyakarta, Indonesia
sonjoruri.bt@ugm.ac.id

ARTICLE INFO

Keywords:

Substantive justice; Cyber Sexual Harassment; Legal Formalism; Gender Perspective; Critical Education; Electronic-Based Sexual Violence; UU TPKS.

ABSTRACT

Cybersexual harassment is a form of gender-based violence that is increasingly prevalent in the digital era, yet remains inadequately addressed in the Indonesian legal system. The dominant legal approach remains oriented toward formalism, with an emphasis on technical procedures and material evidence, often ignoring the suffering and vulnerability of victims, particularly women. As a result, victims not only struggle to access justice but also face additional trauma due to re-victimization during the legal process. This research uses a qualitative approach with normative-sociological methods to examine the limitations of legal formalism and the potential of a substantive justice approach in handling cybersexual harassment cases. Through an analysis of applicable regulations, literature reviews, and court decisions, this research integrates Paulo Freire's gender perspective and critical education as an interpretive framework. The results demonstrate that textually neutral laws are not necessarily just in practice, as they tend to ignore the social context and gender-based power inequalities. This research concludes that substantive justice can only be achieved through a reformulation of the legal paradigm that is responsive to victims' experiences and structural awareness. Critical education plays a strategic role in dismantling patriarchal bias in law and building gender-based legal literacy in society.

A. INTRODUCTION

The development of digital technology over the past two decades has brought various conveniences to human life, including communication, education, and economic transactions. However, on the other hand, the digital world has also given rise to new challenges in the form of technology-based crimes that threaten human security and dignity. One form of this crime is cybersexual harassment, which in many cases has serious psychological, social, and legal consequences for victims.¹ This phenomenon has intensified alongside massive internet penetration, as social media, instant messaging applications, and various online platforms have evolved into new arenas where unequal power relations are reproduced.²

In Indonesia, cases of online Gender-Based Violence (GBV) are increasingly prevalent and attracting public attention. The 2023 Annual Report (CATAHU) published by the National Commission on Violence Against Women (*Komnas Perempuan*) indicates a marked rise in cases of gender-based violence, with most victims identified as young women who are particularly susceptible to digital exploitation.³ This violence takes diverse forms, ranging from sending sexually explicit messages without consent and distributing non-consensual intimate images to digital threats that can damage victims' reputations. This research focuses on technology-based sexual harassment (cybersexual harassment) as one of the most frequent manifestations of online violence. In this context, the existing legal system is unable to provide maximum protection, as applicable regulations are still limited to formal aspects and often fail to capture the complexity of victims' experiences. As emphasized in progressive legal studies, rigid and formalistic laws risk neglecting substantive justice and the need for victim recovery in cases of digital sexual violence.⁴

¹ Doniwen Pietersen, and Dean Collin Langeveldt, "Challenging violence in South African education: A feminist pedagogical and legal analysis," *Curriculum Perspectives* 45, no. 1 (2025): 49.

² Irvan Rizqian, "Upaya perlindungan hukum terhadap anak sebagai korban tindak pidana kekerasan seksual dikaji menurut hukum pidana Indonesia," *Journal Justiciabelen (Jj)* 1, no. 1 (2021): 51.

³ Komisi Nasional Anti Kekerasan terhadap Perempuan, Siaran pers: Peluncuran catatan tahunan kasus kekerasan terhadap perempuan tahun 2023 [Siaran pers], *Komnas Perempuan*, March 7, 2024.
<https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-peluncuran-catatan-tahunan-kasus-kekerasan-terhadap-perempuan-tahun-2023>. Accessed September 24, 2025.

⁴ Rômulo Rhemo Palitot Braga, Tamisa Rúbia Santos do Nascimento Silva, and Raíssa Maria Falcão Costa. "O diálogo enquanto categoria de aproximação entre Paulo Freire e o paradigma restaurativo de justiça," *Revista de Direito* 9, no. 2 (2017): 249.

The main criticism of the handling of cybersexual harassment cases in Indonesia lies in the dominance of legal formalism.⁵ Legal formalism emphasizes legal certainty through the rigid application of written rules, without considering the social context and structural injustices experienced by victims. As a result, despite the existence of regulations such as Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (*Undang Undang Tindak Pidana Kekerasan Seksual/UU TPKS*), their implementation often encounters obstacles.⁶ Many law enforcement officials interpret the rules narrowly, preventing victims from obtaining substantive justice.⁷

Law Number 12 of 2022 on Criminal Acts of Sexual Violence is an important milestone in Indonesia because it formally recognizes various forms of sexual violence and provides stronger legal mechanisms for victim protection, including restitution, psychological assistance, and special procedures in the justice process.⁸ However, in practice, its implementation still faces several limitations. Law enforcement officers often lack adequate understanding of digital forms of sexual violence, and institutional capacity to handle cyber-based cases remains limited. In addition, victims frequently encounter stigma, complex reporting procedures, and evidentiary challenges, which can discourage them from pursuing justice.

In the context of gender, sexual harassment in cyberspace is not an isolated phenomenon. It is closely linked to patriarchal social structures that position women as sexual objects and limit their roles in public spaces, including digital spaces.⁹ Therefore, discussions of substantive justice cannot be separated from an analysis of gender-based power relations. Substantive justice demands legal protection that favors victims, taking into account their vulnerabilities, not simply the textual application of the law.

⁵ Laurie A. Rudman, Eugene Borgida, and Barbara A. Robertson, "Suffering in silence: Procedural justice versus gender socialization issues in university sexual harassment grievance procedures," *Basic and Applied Social Psychology* 17, no. 4 (1995): 520.

⁶ Eko Nurisman, "Risalah tantangan penegakan hukum tindak pidana kekerasan seksual pasca lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 175. See too, Efren Nova, and Edita Elda, "Perlindungan Hukum Terhadap Perempuan dari Kekerasan Seksual: Suatu Kajian Yuridis Empiris Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual di Sumatera Barat," *Unes Journal of Swara Justisia* 7, no. 4 (2024): 1309

⁷ Claudia Rozas, "The possibility of justice: The work of Paulo Freire and difference." *Studies in Philosophy and Education* 26, no. 6 (2007): 566.

⁸ Efren Nova, and Edita Elda, "Perlindungan Hukum Terhadap Perempuan dari Kekerasan Seksual: Suatu Kajian Yuridis Empiris Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual di Sumatera Barat," *Unes Journal of Swara Justisia* 7, no. 4 (2024): 1309.

⁹ Doniwen Pietersen, and Dean Collin Langeveldt, "Challenging violence in South African education: A feminist pedagogical and legal analysis," *Curriculum Perspectives* 45, no. 1 (2025): 51.

This is where the critical education approach, as proposed by Paulo Freire, is crucial. Critical education raises public awareness of structural injustice and teaches the courage to pursue social transformation.¹⁰ Within the framework of addressing cybersexual harassment, critical education can serve as a foundation for encouraging the public, including law enforcement, to understand the realities of victims more empathetically and reflectively. This perspective also challenges gender bias in legal practices that tend to perpetuate structural discrimination.¹¹

Global discourse demonstrates that cybersexual harassment is not only an individual issue but also a collective one related to digital security, gender equality, and human rights protection. Several developed countries have attempted to formulate more progressive legal policies that take into account victims' experiences and the principles of transformative justice.¹² However, in Indonesia, the gap between legal norms and the reality on the ground remains wide, often trapping victims in lengthy, exhausting legal processes and even experiencing re-victimization.

Research on cybersexual harassment and digital gender-based violence has been widely discussed by several studies. For example, Pietersen and Langeveldt¹³ examine cybersexual harassment mainly from the perspective of gender relations in digital spaces, while Braga et al.¹⁴ focus on the development of more progressive legal responses to sexual violence. Mojab¹⁵ and Budnyk et al.¹⁶ also emphasize the role of critical education in addressing structural injustice. However, these studies rarely integrate legal formalism,

¹⁰ Shahrzad Mojab, "Reinventing Pedagogy of the Oppressed: Contemporary critical perspectives: James D. Kirylo (Ed.)," *Bloomsbury Academic London*, (2020): 891. See too, Hasanuddin Muhammad, "Implikasi yuridis pengaturan hak korban tindak pidana kekerasan seksual dalam Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 9, no. 1 (2022): 12.

¹¹ Olena Budnyk, Inna Nikolaesku, Y. Solovey, Olena Grebeniuk, Kateryna Fomin, and Valeriia Shynkarova. "Paulo Freire's critical pedagogy and modern rural education," *Revista Brasileira de Educaç r o do Campo* (2023): 13.

¹² Rômulo Rhemo Palitot Braga, Tamisa Rúbia Santos do Nascimento Silva, and Raíssa Maria Falcão Costa. "O diálogo enquanto categoria de aproximação entre Paulo Freire e o paradigma restaurativo de justiça," *Revista de Direito* 9, no. 2 (2017): 252.

¹³ Doniwen Pietersen, and Dean Collin Langeveldt, "Challenging violence in South African education: A feminist pedagogical and legal analysis," *Curriculum Perspectives* 45, no. 1 (2025): 53.

¹⁴ Rômulo Rhemo Palitot Braga, Tamisa Rúbia Santos do Nascimento Silva, and Raíssa Maria Falcão Costa. "O diálogo enquanto categoria de aproximação entre Paulo Freire e o paradigma restaurativo de justiça," *Revista de Direito* 9, no. 2 (2017): 253.

¹⁵ Shahrzad Mojab, "Reinventing Pedagogy of the Oppressed: Contemporary critical perspectives: James D. Kirylo (Ed.)," *Bloomsbury Academic London*, (2020): 892.

¹⁶ Olena Budnyk, Inna Nikolaesku, Y. Solovey, Olena Grebeniuk, Kateryna Fomin, and Valeriia Shynkarova. "Paulo Freire's critical pedagogy and modern rural education," *Revista Brasileira de Educaç o do Campo* (2023): 14.

gender analysis, and critical education in one framework. As Rao¹⁷ emphasizes, legal reform must move beyond procedural certainty to ensure substantive justice, especially for vulnerable groups often marginalized by a biased formal legal system.

This research aims to fill that gap by analyzing how these perspectives can support substantive justice for victims. Thus, there is an urgency to critique legal formalism through the lens of gender and critical education in order to achieve substantive justice for victims. The fundamental question that arises is:

1. how can the legal system move beyond formal certainty to substantive justice that truly protects victims?
2. How can a gender lens and critical education enrich legal analysis and pave the way for more just social change?

The main objectives of this research are to examine the weaknesses of legal formalism in handling cybersexual harassment cases, to analyze the importance of gender-based substantive justice, and to explore the contribution of critical education in building legal awareness that is more responsive to victims. By combining normative, gender, and critical perspectives, this research is expected to provide both theoretical and practical contributions to legal development in Indonesia.

This research also confirms that cybersexual harassment is not simply a legal issue, but also a matter of culture, education, and social awareness. Therefore, legal reforms that focus solely on text without considering the social context and power relations will consistently fail to provide meaningful protection for victims. Conversely, a substantive, gender-responsive legal approach supported by critical education one that raises awareness of structural injustice has the potential to create a more just and equitable society.

B. RESEARCH METHODS

This study uses a qualitative approach with a normative-sociological approach. This approach was chosen because the primary focus of the study is to understand the phenomenon of cybersexual harassment in depth through legal, gender, and critical education perspectives rather than simply measuring the relationships between variables quantitatively. Within this framework, data is understood as a social construct representing victims' experiences, legal norms, and the surrounding social structures.

Normative-sociological research means that the analysis is conducted in a two-pronged approach: first, through a normative approach to examine

¹⁷ Srikrishna Deva Rao, "Judicial Reforms and Gender Justice: A Critical Examination," *Indian Journal of Law* 3, no.3 (2024), 54.

applicable legal regulations such as Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (*Undang Undang Tindak Pidana Kekerasan Seksual/UU TPKS*), the Electronic Information and Transactions Law (*Undang Undang Informasi dan Transaksi Elektronik/UU ITE*), and other implementing regulations; second, through a sociological approach to understand how these laws are implemented in social reality, including the obstacles victims experience in reporting and enforcing the law.¹⁸

Data collection techniques were conducted through literature review, which included scientific journals, reports from national and international institutions (such as the National Commission on Violence Against Women, UN Women, and Amnesty International), and court decisions related to technology-based sexual harassment cases. This approach allows researchers to capture the gap between legal norms and realities on the ground.

A total court decision related to technology-based sexual harassment and online gender-based violence were analyzed in this study. These decisions were selected purposively from Indonesian court databases based on their relevance to cases involving cyber harassment, non-consensual distribution of intimate content, and other forms of digital sexual violence. The analysis of these decisions aims to understand how judges interpret existing legal provisions, particularly the TPKS Law and the ITE Law, and to identify patterns of legal reasoning, challenges in evidence assessment, and the extent to which victims' experiences are considered in judicial practice.

Data analysis was conducted thematically, identifying and categorizing key issues such as: (1) the limitations of legal formalism; (2) gender bias in judicial practice; and (3) the potential of critical education as a transformative approach. This process was strengthened by theoretical triangulation, combining progressive legal theory, feminist theory, and Paulo Freire's critical education to produce a comprehensive and reflective understanding of substantive justice issues in the digital legal realm. The thematic approach was chosen for its flexibility and acuity in uncovering patterns of meaning emerging from qualitative data, as emphasized by Kogen,¹⁹ who emphasized the importance of transparency and accuracy in reporting the results of thematic analysis in socio-legal research.

¹⁸ Eko Nurisman, "Risalah tantangan penegakan hukum tindak pidana kekerasan seksual pasca lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 176.

¹⁹ Lauren Kogen, "Qualitative thematic analysis of transcripts in social change research: Reflections on common misconceptions and recommendations for reporting results," *International Journal of Qualitative Methods* 23 (2024): 160.

C. DISCUSSION

1. Moving Beyond Legal Formalism: Toward Substantive Justice in Cybersexual Harassment Cases

Cybersexual harassment is increasingly recognized as a serious form of technology-based violence that occurs through digital platforms such as social media, messaging applications, and other online communication channels. This form of harassment includes sending sexually explicit messages without consent, making harassing comments, making explicit sexual requests, and distributing intimate images without permission.²⁰ As digital technology continues to expand, these forms of harassment have become more prevalent and complex, creating new challenges for legal systems around the world.²¹

Globally, digital sexual harassment has been identified as a form of gender-based violence that continues to grow alongside the development of digital communication technologies.²² The digital environment provides perpetrators with new opportunities to exploit anonymity, distance, and technological tools in order to intimidate or harass victims. In many cases, perpetrators use anonymous accounts, temporary messaging systems, or multiple digital platforms to conceal their identities and avoid legal consequences.

In Indonesia, this phenomenon is also becoming increasingly visible. In Indonesia, a 2023 report by the National Commission on Violence Against Women shows a similar trend, with victims predominantly young women.²³ Studies also indicate that perpetrators exploit the anonymity and ease of digital access, while victims struggle to report due to social stigma and limited legal protection.²⁴ These conditions demonstrate that cybersexual harassment is not

²⁰ Samantha Schenk, "Cyber-sexual harassment: The development of the cyber-sexual experiences questionnaire," *McNair Scholars Journal* 12, no. 1 (2008): 12. See too, Deassy JA Hehanussa, and Yonna Beatrix Salamor, "Membangun kesadaran hukum perempuan dan anak dalam penanggulangan tindak pidana kekerasan seksual," *Sabdamas* 1, no. 1 (2019): 297.

²¹ Laurie A. Rudman, Eugene Borgida, and Barbara A. Robertson, "Suffering in silence: Procedural justice versus gender socialization issues in university sexual harassment grievance procedures," *Basic and Applied Social Psychology* 17, no. 4 (1995): 521.

²² Marie Therese Segrave, and Laura Elizabeth Vitis, (Eds.) *Gender, Technology and Violence*, (1st ed.) (Routledge Studies in Crime and Society, 2017).

²³ Komisi Nasional Anti Kekerasan terhadap Perempuan, Siaran pers: Peluncuran catatan tahunan kasus kekerasan terhadap perempuan tahun 2023 [Siaran pers], *Komnas Perempuan*, March 7, 2024.

<https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-peluncuran-catatan-tahunan-kasus-kekerasan-terhadap-perempuan-tahun-2023>. Accessed September 24, 2025.

²⁴ Ani Purwanti, Dyah Wijaningsih, and Muh Afif Mahfud, Reflection on Indonesian Regulations Regarding the Prevention and Enforcement of Sexual Violence Online, *Conference: Proceedings of the 1st International Workshop on Law, Economics and Governance*, IWLEG 2022, (27 July 2022, Semarang, Indonesia).

only a technological problem but also a social and legal issue that requires a comprehensive response from the legal system.

Despite the growing recognition of cybersexual harassment as a serious problem, the legal system often faces difficulties in responding effectively to such cases. One of the primary challenges lies in the dominance of legal formalism in legal practice. Legal formalism emphasizes the textual and procedural application of legal rules, often prioritizing strict adherence to written law rather than considering the broader social context in which violations occur. While this approach aims to maintain legal certainty and procedural consistency, it can also limit the capacity of the legal system to address complex forms of digital violence.

Legal formalism has been widely criticized for its tendency to ignore the social realities experienced by victims. In the case of cybersexual harassment, this approach restricts legal interpretation to textual elements of the law and rigid evidentiary standards. As a result, many cases cannot proceed legally because they do not fully meet the technical requirements required by legal procedures.²⁵ The rigid reliance on formal evidence becomes particularly problematic in cases involving digital harassment, where evidence may be temporary, manipulated, or difficult to obtain.

Victims of cybersexual harassment often experience significant challenges when attempting to collect digital evidence. Harassment frequently occurs through disappearing messages, private conversations, or anonymous accounts that leave minimal traceable records. At the same time, victims may experience psychological trauma that makes it difficult for them to immediately document or report incidents. Research shows that victims often struggle to gather evidence due to trauma, complex technology, or the risk of re-victimization when reporting their experiences.²⁶

These challenges reveal the limitations of relying solely on formal legal procedures to address cybersexual harassment. When legal institutions require victims to provide extensive digital proof without considering the circumstances of the harassment, the justice system may unintentionally create additional barriers for victims seeking protection.²⁷ In such situations, victims may feel discouraged from pursuing legal action because they anticipate skepticism or procedural obstacles during the investigation process.

²⁵ Julie Oldscheid, "MeToo, Sexual Harassment, and Accountability: Considering the Role of Restorative Approaches," *Ohio St. J. on Disp. Resol.* 36 (2020): 689.

²⁶ Kaitlyn Regehr, Arija Birze, and Cheryl Regehr, "Technology facilitated re-victimization: How video evidence of sexual violence contributes to mediated cycles of abuse," *Crime, media, culture* 18, no. 4 (2022): 599.

²⁷ Laurie A. Rudman, Eugene Borgida, and Barbara A. Robertson, "Suffering in silence: Procedural justice versus gender socialization issues in university sexual harassment grievance procedures," *Basic and Applied Social Psychology* 17, no. 4 (1995): 523.

This condition highlights the importance of adopting a substantive justice approach in addressing cybersexual harassment. Substantive justice prioritizes the achievement of real and meaningful justice rather than focusing exclusively on procedural formalities. From this perspective, legal protection must consider the actual experiences of victims, including the psychological, social, and reputational harm caused by harassment.²⁸ Substantive justice also recognizes that strict legal formalism may fail to address structural inequalities that influence how victims experience and report violence.

In cases of digital gender-based violence, substantive justice requires legal institutions to move beyond rigid textual interpretations and instead adopt a victim-centered approach. Such an approach emphasizes empathy, contextual understanding, and recognition of the power imbalance between perpetrators and victims. Legal decisions should therefore take into account not only the presence of formal evidence but also the credibility of victims' narratives and the broader patterns of harassment they experience. This approach is particularly relevant in the context of digital violence because cybersexual harassment often occurs repeatedly and across multiple digital platforms. Victims may experience ongoing harassment, threats, or intimidation that affects their mental health and social relationships.²⁹ Therefore, evaluating such cases solely through narrow evidentiary standards may overlook the cumulative harm caused by repeated acts of harassment.

The importance of substantive justice is also reflected in contemporary legal scholarship, which emphasizes that legal protection must respond to the realities experienced by victims rather than merely fulfilling procedural requirements. In this context, substantive justice becomes a strategic approach for strengthening legal protection for victims of digital gender-based violence.³⁰

However, despite the growing recognition of substantive justice, many legal systems including Indonesia's still struggle to move beyond formalistic legal practices. In many cases, legal authorities remain focused on fulfilling

²⁸ Yusuf Saefudin, Fatin Rohmah Nur Wahidah, Rahtami Susanti, Luthfi Kalbu Adi, and Prima Maharani Putri, "Tindak Pidana Kekerasan Seksual dan Perlindungan Hukum bagi Korban Kekerasan Seksual di Indonesia," *Kosmik Hukum* 23, no. 1 (2023): 28. See too, Deassy JA Hehanussa, and Yonna Beatrix Salamor, "Membangun kesadaran hukum perempuan dan anak dalam penanggulangan tindak pidana kekerasan seksual," *Sabdamas* 1, no. 1 (2019): 297.

²⁹ Galih Bagus Soesilo, Muh Alfian, and Amalia Fadhila Rachmawati, "Penegakan Hukum Pelaku Tindak Pidana Pelecehan Seksual terhadap Perempuan di Moda Transportasi Umum Konvensional," *Ahmad Dahlan Legal Perspective* 1, no. 2 (2021): 148.

³⁰ Mahayu Rinta Ariani, Wahyu Widodo, and Toebagus Galang Windi Pratama, "Juridical Review of Legal Protection Victims of Cyber Gender-Based Violence (Case Study of High Court Decision Number 150/PID/2020/PT BDG)," *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum* 5, no. 1 (2023): 68.

the formal elements of criminal offenses as defined in statutory regulations.³¹ Regulations such as the Electronic Information and Transactions Law and other legal provisions often prioritize technical legal requirements rather than the broader social context of harassment cases.

As a result, many cases of technology-based harassment fail to reach prosecution due to insufficient technical evidence. For example, the absence of recorded conversations or deleted digital messages can make it difficult to prove harassment under strict legal standards.³² When such technical limitations prevent cases from proceeding, victims may feel that the legal system is unable to provide adequate protection.

This situation illustrates how legal formalism can unintentionally reproduce injustice. Victims who seek justice may experience additional frustration when their cases are dismissed due to procedural technicalities. Consequently, the legal system risks losing public trust if it is perceived as being insensitive to the realities faced by victims of digital violence.³³ Therefore, moving beyond legal formalism does not mean abandoning legal certainty. Instead, it involves expanding legal interpretation to incorporate social realities and the lived experiences of victims. By integrating substantive justice principles into legal practice, the justice system can become more responsive, humane, and effective in addressing cybersexual harassment.

2. Gender Lens and Critical Education as Foundations for Transformative Legal Change

Understanding cybersexual harassment requires more than a purely legal analysis. It also requires examining the gender dynamics that shape online interactions and influence how victims are treated within society and the legal system. From a gender perspective, cybersexual harassment is closely connected to patriarchal social structures that continue to shape power relations in both physical and digital spaces. Gender studies emphasize that sexual harassment is often rooted in unequal power relations between men and women. These inequalities can manifest in various forms of behavior in digital environments, where male dominance may appear through sexualized

³¹ Dody Suryandi, Nike Hutabarat, and Hartono Pamungkas, "Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Kekerasan Seksual Terhadap Anak," *Jurnal Darma Agung* 28, no. 1 (2020): 87. See too, Elizabeth Siregar, Dessy Rakhmawaty, and Zulham Adamy Siregar, "Kekerasan Seksual Terhadap Perempuan: Realitas dan Hukum: Realitas dan Hukum," *PROGRESIF: Jurnal Hukum* 14, no. 1 (2020): 436.

³² Rizky Perdana Bayu Putra, Zainal Arif Masruchi, Gaspar Doroh, Joni Irawan, Milka Kumala, and Moch Edy Saputra, "Legal Protection of Women Victims of Sexual Harassment on Campus in The Indonesian Criminal Justice System Reviewed from Permendikbud Number 30 of 2021," *International Journal of Sustainable Law* 1, no. 1 (2024): 25.

³³ Deassy JA Hehanussa, and Yonna Beatrix Salamor, "Membangun kesadaran hukum perempuan dan anak dalam penanggulangan tindak pidana kekerasan seksual," *Sabdanas* 1, no. 1 (2019): 298.

comments, harassment, or threats directed at women. As a result, women are disproportionately affected by cybersexual harassment, reflecting broader patterns of gender-based violence.³⁴

Substantive justice from a gender perspective requires the legal system to recognize these structural inequalities. Rather than treating cybersexual harassment as isolated incidents, legal analysis must consider how gender norms and cultural expectations influence the experiences of victims. Victims of digital harassment often face social stigma that discourages them from reporting abuse or seeking legal protection.³⁵ This problem is closely related to the concept of gender bias within legal systems. Feminist legal expert has long argued that legal frameworks are often constructed within patriarchal social contexts, which can lead to gender-biased interpretations of law. Even when laws appear neutral in their wording, their implementation may still reflect underlying social inequalities.³⁶

Victim-blaming attitudes remain a significant barrier to justice in many cybersexual harassment cases.³⁷ Victims may be criticized for their clothing, their online activities, or their personal relationships with perpetrators. These attitudes reflect a broader cultural tendency to hold women responsible for preventing harassment rather than holding perpetrators accountable.

From a substantive justice perspective, such attitudes must be challenged because they reinforce structural discrimination against victims. Legal institutions must therefore develop gender-sensitive approaches that acknowledge the specific vulnerabilities faced by victims of digital harassment. Recognizing these vulnerabilities is essential for creating legal processes that are fair and supportive rather than intimidating or dismissive.

Another important factor influencing victims' access to justice is the digital literacy gap.³⁸ Many victims lack sufficient knowledge about how to preserve digital evidence, report harassment to online platforms, or access

³⁴ Rizki Setyobowo Sangalang, "Perlindungan hukum terhadap korban tindak pidana kekerasan seksual dalam lingkungan pendidikan," *Jurnal Ilmu Hukum Tambun Bungai* 7, no. 2 (2022): 179.

³⁵ Yusuf Saefudin, Fatin Rohmah Nur Wahidah, Rahtami Susanti, Luthfi Kalbu Adi, and Prima Maharani Putri, "Tindak Pidana Kekerasan Seksual dan Perlindungan Hukum bagi Korban Kekerasan Seksual di Indonesia," *Kosmik Hukum* 23, no. 1 (2023): 29.

³⁶ Joanne Conaghan, "Gendered harms and the law of tort: remedying (sexual) harassment," *Oxford Journal of Legal Studies* 16, no. 3 (1996): 421. See too, M. Chaerul Risal, "Perlindungan hukum terhadap korban kekerasan seksual pasca pengesahan undang-undang tindak pidana kekerasan seksual: Penerapan dan efektivitas," *Al-Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 11, no. 1 (2022): 78.

³⁷ Erika Putri Wulandari, and Hetty Krisnani, "Kecenderungan menyalahkan korban (victim-blaming) dalam kekerasan seksual terhadap perempuan sebagai dampak kekeliruan atribusi," *Share: Social Work Journal* 10, no. 2 (2020): 189.

³⁸ Elizabeth Siregar, Dessy Rakhmawaty, and Zulham Adamy Siregar, "Kekerasan Seksual Terhadap Perempuan: Realitas dan Hukum: Realitas dan Hukum," *PROGRESIF: Jurnal Hukum* 14, no. 1 (2020): 434.

legal support systems. This gap often places victims at a disadvantage compared to perpetrators who may possess greater technological skills. Addressing these challenges requires broader social change, which cannot be achieved through legal reform alone. In this context, critical education provides an important framework for promoting social awareness and transformative change. Paulo Freire introduced the concept of critical pedagogy as a method for raising awareness of social injustice and empowering individuals to challenge oppressive structures.³⁹

Critical pedagogy encourages individuals to question social norms and power relations that perpetuate inequality. In the context of cybersexual harassment, this approach can help law enforcement officials, policymakers, and community members develop a deeper understanding of the structural factors that contribute to digital violence.⁴⁰ Progressive legal scholarship highlights that Paulo Freire's ideas can help expand the understanding of justice beyond rigid legal rules. Through critical education, legal actors can develop greater empathy toward victims and recognize that justice must address the social realities experienced by individuals affected by violence.⁴¹

Critical education also plays an important role in strengthening digital literacy and public awareness. Educational programs and community initiatives can help individuals recognize different forms of cybersexual harassment and understand the importance of respecting digital boundaries.⁴² Increasing digital literacy can empower victims to protect themselves and encourage them to report harassment when it occurs.

In addition, critical education supports the development of collective responsibility in addressing online violence. Rather than treating cybersexual harassment as a private issue between individuals, communities are encouraged to recognize it as a structural problem that requires collective action. Educational initiatives can therefore promote social norms that reject harassment and support victims.

Research also suggests that critical education can foster empathy and social awareness within legal institutions. When law enforcement officials

³⁹ Shahrzad Mojab, "Reinventing Pedagogy of the Oppressed: Contemporary critical perspectives: James D. Kirylo (Ed.)," *Bloomsbury Academic London*, (2020): 894.

⁴⁰ Irvan Rizqian, "Upaya perlindungan hukum terhadap anak sebagai korban tindak pidana kekerasan seksual dikaji menurut hukum pidana Indonesia," *Journal Justiciabelen (Jj)* 1, no. 1 (2021): 54. See too, Rizki Setyobowo Sangalang, "Perlindungan hukum terhadap korban tindak pidana kekerasan seksual dalam lingkungan pendidikan," *Jurnal Ilmu Hukum Tambun Bungai* 7, no. 2 (2022): 181.

⁴¹ Doniwen Pietersen, and Dean Collin Langeveldt, "Challenging violence in South African education: A feminist pedagogical and legal analysis," *Curriculum Perspectives* 45, no. 1 (2025): 54.

⁴² Ani Purwanti, and Marzellina Hardiyanti. "Strategi penyelesaian tindak kekerasan seksual terhadap perempuan dan anak melalui RUU kekerasan seksual," *Masalah-Masalah Hukum* 47, no. 2 (2018): 140.

receive training that incorporates gender perspectives and critical pedagogy, they may become more sensitive to the experiences of victims and more willing to adopt victim-centered approaches in legal practice.⁴³

Furthermore, critical education contributes to the development of digital advocacy and public awareness campaigns. Through education and social dialogue, communities can build stronger support systems for victims and challenge cultural norms that tolerate harassment. Educational initiatives can also encourage individuals to report incidents of digital violence and support victims who seek justice.⁴⁴

Ultimately, integrating gender analysis and critical education provides a comprehensive framework for addressing cybersexual harassment. While gender analysis helps reveal structural inequalities that shape digital violence, critical education promotes the social awareness necessary to challenge those inequalities. By combining these approaches with substantive justice principles, the legal system can move beyond rigid formalism and develop more inclusive and responsive mechanisms for protecting victims. Such transformation is essential for creating a legal system that not only enforces rules but also promotes dignity, equality, and justice in the digital era.

D. Conclusion

This research shows that substantive justice for victims of cybersexual harassment has not been fully realized in the Indonesian legal system. The dominance of legal formalism which focuses on text, procedures, and digital evidence remains a major obstacle to fulfilling victims' rights, particularly women, as the most vulnerable group. In practice, victims not only face technical challenges in providing evidence but also experience secondary trauma in the form of re-victimization, neglect of psychosocial aspects, and a lack of empathy in the legal process.

This phenomenon demonstrates that a textually neutral legal approach is not necessarily just in practice. Through a gender lens, this research confirms that cybersexual harassment is not simply a digital crime but also a reflection of power imbalances in a patriarchal society. A legal system that ignores such social structures has the potential to reinforce a culture of victim blaming and weaken public trust in justice.

Therefore, a paradigm shift is needed from procedural law to a substantive justice approach that takes into account victims lived experiences, their vulnerabilities, and the social context in which the crime occurred.

⁴³ Olena Budnyk, Inna Nikolaesku, Y. Solovey, Olena Grebeniuk, Kateryna Fomin, and Valeriia Shynkarova. "Paulo Freire's critical pedagogy and modern rural education," *Revista Brasileira de Educaçã o do Campo* (2023): 16.

⁴⁴ Deepa Sethi, and Sanchita Ghatak, "Mitigating cyber sexual harassment: An Insight from India," *Asian Themes in Social Sciences Research* 1, no. 2 (2018): 38.

Substantive justice requires not only regulatory reform but also reform in the thinking and actions of law enforcement officials. Within Paulo Freire's critical education framework, law must be understood as an instrument of awareness and emancipation, not simply a normative mechanism. Critical and gender-based legal education is needed to dismantle patriarchal bias in legal practice and build collective sensitivity to the plight of victims. In this way, the legal community including officials, academics, and citizens can play an active role in creating a transformative legal system.

The main conclusion of this research is: substantive justice in handling cybersexual harassment can only be achieved through an interdisciplinary approach that integrates progressive law, gender theory, and critical education. The law must be a vibrant and responsive space, one that not only pursues formal certainty but also upholds the dignity and reparation of victims as the core of social justice.

BIBLIOGRAPHY

Journals:

- Ariani, Mahayu Rinta, Wahyu Widodo, and Toebagus Galang Windi Pratama. "Juridicial Review of Legal Protection Victims of Cyber Gender-Based Violence (Case Study of High Court Decision Number 150/PID/2020/PT BDG)." *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum* 5, no. 1 (2023): 62-70. <https://doi.org/10.37631/widyapranata.v5i1.846>.
- Braga, Rômulo Rhemo Palitot, Tamisa Rúbia Santos do Nascimento Silva, and Raíssa Maria Falcão Costa. "O diálogo enquanto categoria de aproximação entre Paulo Freire e o paradigma restaurativo de justiça." *Revista de Direito* 9, no. 2 (2017): 243-272.
- Budnyk, Olena, Inna Nikolaesku, Y. Solovey, Olena Grebeniuk, Kateryna Fomin, and Valeriia Shynkarova. "Paulo Freire's critical pedagogy and modern rural education." *Revista Brasileira de Educacao do Campo* (2023): 1-20. <https://doi.org/10.20873/uft.rbec.e16480>
- Conaghan, Joanne. "Gendered harms and the law of tort: remedying (sexual) harassment." *Oxford Journal of Legal Studies* 16, no. 3 (1996): 407-431. <https://doi.org/10.1093/OJLS/16.3.407>.
- Goldscheid, Julie. "MeToo, Sexual Harassment, and Accountability: Considering the Role of Restorative Approaches." *Ohio St. J. on Disp. Resol.* 36 (2020): 689.
- Hehanussa, Deassy JA, and Yonna Beatrix Salamor. "Membangun kesadaran hukum perempuan dan anak dalam penanggulangan tindak pidana kekerasan seksual." *Sabdamas* 1, no. 1 (2019): 292-297.

- Kogen, Lauren. "Qualitative thematic analysis of transcripts in social change research: Reflections on common misconceptions and recommendations for reporting results." *International Journal of Qualitative Methods* 23 (2024): 16094069231225919. <https://doi.org/10.1177/16094069231225919>.
- Mojab, Shahrzad. "Reinventing Pedagogy of the Oppressed: Contemporary critical perspectives: James D. Kirylo (Ed.)." *Bloomsbury Academic London*, (2020): 889-891. <https://doi.org/10.5040/9781350117211>.
- Muhammad, Hasanuddin. "Implikasi yuridis pengaturan hak korban tindak pidana kekerasan seksual dalam Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual." *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 9, no. 1 (2022): 1-15.
- Nova, Efren, and Edita Elda. "Perlindungan Hukum Terhadap Perempuan dari Kekerasan Seksual: Suatu Kajian Yuridis Empiris Implementasi Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual di Sumatera Barat." *Unes Journal of Swara Justisia* 7, no. 4 (2024): 1308-1320. <https://doi.org/10.31933/ujsj.v7i4.444>
- Nurisman, Eko. "Risalah tantangan penegakan hukum tindak pidana kekerasan seksual pasca lahirnya Undang-Undang Nomor 12 Tahun 2022." *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 170-196. <https://doi.org/10.14710/jphi.v4i2.170-196>
- Pietersen, Doniwen, and Dean Collin Langeveldt. "Challenging violence in South African education: A feminist pedagogical and legal analysis." *Curriculum Perspectives* 45, no. 1 (2025): 45-55. <https://doi.org/10.1007/s41297-024-00265-8>.
- Purwanti, Ani, and Marzellina Hardiyanti. "Strategi penyelesaian tindak kekerasan seksual terhadap perempuan dan anak melalui RUU kekerasan seksual." *Masalah-Masalah Hukum* 47, no. 2 (2018): 138-148. <https://doi.org/10.14710/mmh.47.2.2018.138-148>
- Putra, Rizky Perdana Bayu, Zainal Arif Masruchi, Gasper Doroh, Joni Irawan, Milka Kumala, and Moch Edy Saputra. "Legal Protection of Women Victims of Sexual Harassment on Campus in The Indonesian Criminal Justice System Reviewed from Permendikbud Number 30 of 2021." *International Journal of Sustainable Law* 1, no. 1 (2024): 20-28. <https://doi.org/10.71131/1tfqya18>.
- Rao, Srikrishna Deva. "Judicial Reforms and Gender Justice: A Critical Examination." *Indian Journal of Law* 3, no.3 (2024), 53. <https://doi.org/10.36676/ijl.v2.i5.58>.
- Regehr, Kaitlyn, Arija Birze, and Cheryl Regehr. "Technology facilitated re-victimization: How video evidence of sexual violence contributes to

- mediated cycles of abuse." *Crime, media, culture* 18, no. 4 (2022): 597-615. <https://doi.org/10.1177/17416590211050333>
- Risal, M. Chaerul. "Perlindungan hukum terhadap korban kekerasan seksual pasca pengesahan undang-undang tindak pidana kekerasan seksual: Penerapan dan efektivitas." *Al-Daulah: Jurnal Hukum Pidana dan Ketatanegaraan* 11, no. 1 (2022): 75-93.
- Rizqian, Irvan. "Upaya perlindungan hukum terhadap anak sebagai korban tindak pidana kekerasan seksual dikaji menurut hukum pidana Indonesia." *Journal Justiciabelen (Jj)* 1, no. 1 (2021): 51.
- Rozas, Claudia. "The possibility of justice: The work of Paulo Freire and difference." *Studies in Philosophy and Education* 26, no. 6 (2007): 561-570. <https://doi.org/10.1007/S11217-007-9065-Z>.
- Rudman, Laurie A., Eugene Borgida, and Barbara A. Robertson. "Suffering in silence: Procedural justice versus gender socialization issues in university sexual harassment grievance procedures." *Basic and Applied Social Psychology* 17, no. 4 (1995): 519-541. https://doi.org/10.1207/S15324834BASP1704_6.
- Saefudin, Yusuf, Fatin Rohmah Nur Wahidah, Rahtami Susanti, Luthfi Kalbu Adi, and Prima Maharani Putri. "Tindak Pidana Kekerasan Seksual dan Perlindungan Hukum bagi Korban Kekerasan Seksual di Indonesia." *Kosmik Hukum* 23, no. 1 (2023): 24-33. DOI: [10.30595/kosmikhukum.v23i1.17320](https://doi.org/10.30595/kosmikhukum.v23i1.17320)
- Sangalang, Rizki Setyobowo. "Perlindungan hukum terhadap korban tindak pidana kekerasan seksual dalam lingkungan pendidikan." *Jurnal Ilmu Hukum Tambun Bungai* 7, no. 2 (2022): 176-192. <https://doi.org/10.61394/jihtb.v7i2.230>
- Schenk, Samantha. "Cyber-sexual harassment: The development of the cyber-sexual experiences questionnaire." *McNair Scholars Journal* 12, no. 1 (2008): 8-16.
- Segrave, Marie Therese, & Vitis, Laura Elizabeth. (Eds.) *Gender, Technology and Violence*. (1st ed.) Routledge Studies in Crime and Society; Vol. 32, 2017. <https://doi.org/10.4324/9781315441160>
- Sethi, Deepa, and Sanchita Ghatak. "Mitigating cyber sexual harassment: An Insight from India." *Asian Themes in Social Sciences Research* 1, no. 2 (2018): 34-43. <https://doi.org/10.33094/journal.139.2018.12.34.43>
- Siregar, Elizabeth, Dessy Rakhmawaty, and Zulham Adamy Siregar. "Kekerasan Seksual Terhadap Perempuan: Realitas dan Hukum: Realitas dan Hukum." *PROGRESIF: Jurnal Hukum* 14, no. 1 (2020). <https://doi.org/10.33019/progresif.v14i1.1778>
- Soesilo, Galih Bagas, Muh Alfian, and Amalia Fadhila Rachmawati. "Penegakan Hukum Pelaku Tindak Pidana Pelecehan Seksual terhadap Perempuan di

Moda Transportasi Umum Konvensional." *Ahmad Dahlan Legal Perspective* 1, no. 2 (2021): 145-154.

Suryandi, Dody, Nike Hutabarat, and Hartono Pamungkas. "Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Kekerasan Seksual Terhadap Anak." *Jurnal Dharma Agung* 28, no. 1 (2020): 84-91. <http://dx.doi.org/10.46930/ojsuda.v28i1.464>

Wulandari, Erika Putri, and Hetty Krisnani. "Kecenderungan menyalahkan korban (victim-blaming) dalam kekerasan seksual terhadap perempuan sebagai dampak kekeliruan atribusi." *Share: Social Work Journal* 10, no. 2 (2020): 187-197. <https://doi.org/10.24198/share.v10i2.31408>

Research Report:

Komisi Nasional Anti Kekerasan terhadap Perempuan. Siaran pers: Peluncuran catatan tahunan kasus kekerasan terhadap perempuan tahun 2023 [Siaran pers]. *Komnas Perempuan*, March 7, 2024. <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-peluncuran-catatan-tahunan-kasus-kekerasan-terhadap-perempuan-tahun-2023>. Accessed September 24, 2025.

Conference:

Purwanti, Ani, Dyah Wijaningsih, and Muh Afif Mahfud. Reflection on Indonesian Regulations Regarding the Prevention and Enforcement of Sexual Violence Online. *Conference: Proceedings of the 1st International Workshop on Law, Economics and Governance*, IWLEG 2022, 27 July 2022, Semarang, Indonesia. <https://doi.org/10.4108/eai.27-7-2022.2326246>.