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# Civil Liability for Non-Material Damages in Online Gender-Based Violence: Toward an Integrated Restitution Framework

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## Abstract

**This study aims** to analyze civil liability for non-material damages arising from online gender-based violence (OGBV) in Indonesia and to identify obstacles to the implementation of the restitution mechanism under Article 30 of Law No. 12 of 2022 on Sexual Violence Crimes (TPKS Law).

**The research method** employs an empirical juridical approach within a socio-legal framework. Data were collected through semi-structured interviews with senior legal advocates experienced in OGBV restitution procedures, analysis of relevant legal documents, and qualitative analysis of five selected district court decisions issued between 2022 and 2025, supplemented by institutional reports from Komnas Perempuan and the Witness and Victim Protection Agency (LPSK).

**The novelty** of this study lies in developing an integrated restitution framework that connects the criminal restitution mechanism under Article 30 of the TPKS Law as *lex specialis* with civil claims under Article 1365 of the Civil Code as a complementary avenue for recovering non-material damages suffered by OGBV victims. Unlike previous studies that tend to examine criminal and civil mechanisms separately, this study conceptualizes their integration through a victim-oriented and gender-sensitive framework.

**The results** of the study indicate that the restitution mechanism under the TPKS Law has not been optimally implemented in judicial practice, particularly due to the absence of standardized guidance for assessing non-material damages and the limited incorporation of victim perspectives in law enforcement practices. This finding is contextualized by Komnas Perempuan data recording 1,791 OGBV reports in 2024, representing a 40.8 percent increase from the previous year.

**In conclusion**, more effective recovery of non-material damages for OGBV victims requires greater integration between criminal restitution and civil compensation mechanisms, supported by judicial guidelines for assessing non-material damages and trauma-informed training for law enforcement officers handling OGBV cases.

**Keywords:** Online Gender-Based Violence; Non-Material Damages; Civil Law Liability; Restitution; TPKS Law

## Abstrak

**Penelitian ini bertujuan** untuk menganalisis pertanggungjawaban hukum perdata atas kerugian nonmateriil yang timbul akibat kekerasan berbasis gender online (KBGO) di

Indonesia serta mengidentifikasi hambatan dalam penerapan mekanisme restitusi berdasarkan Pasal 30 Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual (UU TPKS).

**Metode penelitian** menggunakan pendekatan yuridis empiris dalam kerangka socio-legal. Data dikumpulkan melalui wawancara semi-terstruktur dengan advokat senior yang berpengalaman dalam prosedur restitusi KBGO, analisis terhadap dokumen hukum yang relevan, dan analisis kualitatif terhadap lima putusan pengadilan negeri terpilih yang diputus pada periode 2022–2025, serta dilengkapi dengan laporan institusional dari Komnas Perempuan dan Lembaga Perlindungan Saksi dan Korban (LPSK).

**Kebaruan penelitian** terletak pada pengembangan kerangka restitusi terintegrasi yang menghubungkan mekanisme restitusi pidana berdasarkan Pasal 30 UU TPKS sebagai *lex specialis* dengan gugatan perdata berdasarkan Pasal 1365 KUHPerdata sebagai instrumen pelengkap untuk pemulihan kerugian nonmateriil yang dialami korban KBGO. Berbeda dengan penelitian sebelumnya yang cenderung mengkaji mekanisme pidana dan perdata secara terpisah, penelitian ini mengkonseptualisasikan integrasi keduanya melalui kerangka yang berorientasi pada korban dan sensitif gender.

**Hasil penelitian** menunjukkan bahwa mekanisme restitusi berdasarkan UU TPKS belum diterapkan secara optimal dalam praktik peradilan, terutama karena belum adanya pedoman yang terstandar dalam menilai kerugian nonmateriil serta masih terbatasnya pengintegrasian perspektif korban dalam praktik penegakan hukum. Temuan ini dikontekstualisasikan dengan data Komnas Perempuan yang mencatat 1.791 laporan KBGO pada tahun 2024, meningkat sebesar 40,8 persen dibandingkan tahun sebelumnya.

**Kesimpulannya**, pemulihan kerugian nonmateriil bagi korban KBGO yang lebih efektif memerlukan integrasi yang lebih kuat antara mekanisme restitusi pidana dan ganti rugi perdata, yang didukung oleh pedoman bagi hakim dalam menilai kerugian nonmateriil serta pelatihan berbasis pemahaman trauma (trauma-informed) bagi aparat penegak hukum yang menangani perkara KBGO.

**Kata kunci:** Kekerasan berbasis gender online; Kerugian nonmateriil; Pertanggungjawaban perdata; Restitusi; UU TPKS

## 1. INTRODUCTION

Online gender-based violence (OGBV) has emerged as a structurally distinct form of gendered harm in the digital age, demanding sustained legal scholarly attention across jurisdictions due to its capacity to inflict severe, persistent, and geographically unbounded damage upon victims.<sup>1,2</sup> Unlike conventional forms of gender-based violence, OGBV exploits the architectural features of digital platforms - including permanence, viral dissemination, and anonymity - to perpetuate harm that extends far beyond the initial act of violation. Technology-facilitated sexual violence (TFSV), a broader category encompassing OGBV, encompasses a range of behaviors including online sexual harassment, gender- and sexuality-

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<sup>1</sup> Putri Fransiska Purnama Pratiwi et al., "Assessing Legal Protection Effectiveness for Women Facing Digital Sexual Violence," *Journal of Human Rights, Culture and Legal System* 5, no. 3 (December 2025): 922–48, <https://doi.org/10.53955/jhcls.v5i3.795>.

<sup>2</sup> Dian Rahadian, Evy Indriasari, and Lely Setyawati Kurniawan, "A Study of Legal Protection for Victims of Gender-Based Violence in Digital Spaces from a Human Rights Perspective," *Jurnal Daulat Hukum* 8, no. 4 (December 2025): 1001–14, <https://doi.org/10.30659/jdh.v8i4.49390>.

based harassment, cyberstalking, image-based sexual exploitation, and coercive conduct facilitated through digital communications, with preliminary studies indicating that such harms are predominantly gender-, sexuality-, and age-based, disproportionately affecting young women.<sup>3</sup> This global phenomenon is acutely reflected in Indonesia's empirical landscape: the National Commission on Violence Against Women (Komnas Perempuan) documented 1,791 OGBV reports across all spheres in 2024, representing a 40.8 percent increase compared to the previous year - a trajectory that demands urgent legal-scholarly inquiry into whether existing accountability mechanisms are adequate to the scale and nature of the harm.<sup>4</sup>

The harms produced by OGBV are multidimensional, encompassing what legal scholars increasingly recognize as non-material damages - losses that are real and devastating yet resist straightforward monetary quantification. Empirical research by Bates demonstrates that victims of non-consensual intimate image distribution exhibit trust disruption, post-traumatic stress disorder, anxiety, depression, and suicidal ideation at rates comparable to survivors of rape and sexual assault,<sup>5</sup> underscoring the severity of psychological harm caused by this category of OGBV. McGlynn and Rackley theorize that image-based sexual abuse produces individual harms of physical and mental illness together with the loss of dignity, privacy, and sexual autonomy, which combine to constitute a form of cultural harm impacting both individuals and society as a whole.<sup>6</sup> Citron and Franks further argue that violations of sexual privacy produce grave emotional and dignitary harms, exact steep financial costs, and increase the risks of physical assault, affirming that the non-material dimension of OGBV-related harm is central rather than peripheral to any adequate legal response.<sup>7</sup> These theoretical frameworks converge on a critical insight that directly challenges civil law systems: non-material damages in OGBV cases are not merely subjective or speculative losses but constitute legally cognizable harms requiring systematic recognition and recovery.<sup>8</sup> However, civil law systems generally demand measurable, documentable evidence of loss, creating a structural mismatch between the nature of digital non-material harm and the evidentiary requirements of conventional tort doctrine. This mismatch constitutes the central legal problem that this study seeks to address.

Against this theoretical background, the Indonesian legislative framework has undergone significant transformation through the enactment of Law Number 12 of 2022 on Sexual Violence Crimes (TPKS Law).<sup>9</sup> Prior to this legislation, the handling of OGBV cases was

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<sup>3</sup> Nicola Henry and Anastasia Powell, "Technology-Facilitated Sexual Violence: A Literature Review of Empirical Research," *Trauma, Violence, & Abuse* 19, no. 2 (April 2018): 195–208, <https://doi.org/10.1177/1524838016650189>.

<sup>4</sup> Komnas Perempuan, "Catatan Tahunan (CATAHU) 2025," Jakarta: Komnas Perempuan, 2025.

<sup>5</sup> Samantha Bates, "Revenge Porn and Mental Health: A Qualitative Analysis of the Mental Health Effects of Revenge Porn on Female Survivors," *Feminist Criminology* 12, no. 1 (January 2017): 22–42, <https://doi.org/10.1177/1557085116654565>.

<sup>6</sup> Clare McGlynn and Erika Rackley, "Image-Based Sexual Abuse," *Oxford Journal of Legal Studies* 37, no. 3 (September 2017): 534–61, <https://doi.org/10.1093/ojls/gqw033>.

<sup>7</sup> Danielle Keats Citron and Mary Anne Franks, "Criminalizing Revenge Porn," SSRN Scholarly Paper no. 2368946 (Rochester, NY: Social Science Research Network, May 19, 2014), <https://papers.ssrn.com/abstract=2368946>.

<sup>8</sup> Jonas Knetsch, "The Compensation of Non-Pecuniary Loss in GDPR Infringement Cases," *Journal of European Tort Law* 13, no. 2 (September 2022): 132–53, <https://doi.org/10.1515/jetl-2022-0008>.

<sup>9</sup> Wahab Aznul Hidayat et al., "Realizing Restitution Justice for Child Victims of Sexual Assault Regulated Child

fragmented across sectoral regulations - primarily Article 27(1) of the Electronic Information and Transactions Law (ITE Law) and Article 4(1) of the Pornography Law - neither of which contained provisions oriented toward victim recovery and both of which contributed to secondary victimization by treating intimate image distribution primarily as a morality offense rather than a gendered harm. Empirical studies confirm that the resolution of OGBV cases remained limited to the application of the ITE Law and the Pornography Law, which failed to provide adequate legal certainty for victims and lacked integrated victim recovery mechanisms, with restitution rights for OGBV victims never accommodated in analyzed judicial decisions. The TPKS Law marked a legislative breakthrough by recognizing electronic-based sexual violence under Article 4(2)(j) and mandating restitution under Article 30 - provisions that, read alongside PERMA Number 1 of 2022,<sup>10</sup> establish that criminal restitution does not extinguish the victim's right to pursue civil claims where restitution is denied or inadequate.<sup>11</sup> Nevertheless, the TPKS Law does not provide standardized criteria for assessing psychological and non-material harms in restitution claims, creating significant judicial uncertainty in determining the quantum of compensation for psychological and reputational losses suffered by victims.

A review of previous studies reveals growing scholarly attention to OGBV's legal dimensions in Indonesia, yet significant gaps persist. Jawade Hafidz and Arsyad examined legal protection for OGBV victims under Indonesian positive law, contributing an important inventory of applicable legal instruments and mapping OGBV's forms and impacts.<sup>12</sup> However, their research adopts a purely doctrinal methodology without examining the empirical reality of judicial implementation, leaving unanswered the critical question of how existing legal provisions function - or fail to function - in actual court proceedings. Azahra analyzed the restitution mechanism established by the TPKS Law, contributing valuable insights into the statutory architecture of Article 30.<sup>13</sup> However, this study does not specifically address OGBV cases, nor does it investigate the role of Article 1365 of the Civil Code as a complementary instrument when criminal restitution proves unavailable or inadequate, thereby leaving unresolved the intersection between the two legal pathways. Faizah and Hariri examined legal protection for revenge porn victims under the TPKS Law, presenting a useful analysis of the normative framework applicable to one specific OGBV form.<sup>14</sup> Nevertheless, their study is

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Protection," *Jurnal USM Law Review* 7, no. 2 (2024): 26–37, <https://doi.org/10.26623/julr.v7i3.9697>.

<sup>10</sup> "Briefing-Paper-on-OGBV\_ENG.Pdf," n.d., accessed June 8, 2026, [https://www.icj.org/wp-content/uploads/2023/09/Briefing-Paper-on-OGBV\\_ENG.pdf](https://www.icj.org/wp-content/uploads/2023/09/Briefing-Paper-on-OGBV_ENG.pdf).

<sup>11</sup> "Peraturan Mahkamah Agung Nomor 1 Tahun 2022 Tentang Tata Cara Penyelesaian Permohonan Dan Pemberian Restitusi Dan Kompensasi Kepada Korban Tindak Pidana," Jdih Mahkamah Agung, accessed May 28, 2026, <https://jdih.mahkamahagung.go.id/>.

<sup>12</sup> Jawade Hafidz Arsyad, "Perlindungan Hukum Korban Kekerasan Berbasis Gender Online (KBGO) dalam Hukum Positif Indonesia," *Jurnal Cakrawala Informasi* 2, no. 2 (December 2022): 26–41, <https://doi.org/10.54066/jci.v2i2.241>.

<sup>13</sup> Jazmine Azzahra and Muhammad Teguh Syuhada Lubis, "Mekanisme Pelaksanaan Restitusi Terhadap Korban Kekerasan Seksual (Studi Komparatif Hukum Di Indonesia Dan Thailand)," *Legal Standing : Jurnal Ilmu Hukum* 9, no. 1 (January 2025): 117–30, <https://doi.org/10.24269/lis.v9i1.11387>.

<sup>14</sup> Azza Fitrahul Faizah and Muhammad Rifqi Hariri, "Pelindungan Hukum terhadap Korban Revenge Porn sebagai

limited to a single OGBV modality, adopts a normative approach without empirical grounding, and does not develop a transferable accountability model applicable across the full spectrum of OGBV manifestations. Basanta's empirical study of OGBV victim and perpetrator characteristics in Purwokerto found that restitution rights have never been accommodated in any analyzed court decision, confirming that victim recovery remains suboptimal and that OGBV responses cannot rely solely on criminalization but must be oriented toward victim protection and recovery.<sup>15</sup> While contributing important empirical grounding, this study focuses on victim profiling without developing a comprehensive legal accountability model that operationalizes the pathway from harm recognition to non-material damage recovery. Research by the Institute for Criminal Justice Reform (ICJR) identified structural obstacles including administrative burdens on victims, inconsistent restitution calculation, and minimal implementation in proceedings, confirming that the absence of a national standard for calculating non-material losses causes restitution to be frequently rejected or awarded at inadequate values.<sup>16</sup> However, this research addresses TPKS implementation broadly without developing OGBV-specific solutions or integrating the civil liability dimension.

Although these studies collectively advance the understanding of the legal dimensions of OGBV, three key gaps remain. First, at the theoretical level, existing studies tend to examine criminal restitution and civil remedies separately, leaving the relationship between Article 30 of the TPKS Law as *lex specialis* and Article 1365 of the Civil Code as a complementary basis for recovering non-material damages insufficiently conceptualized. This fragmentation also limits the incorporation of victim-oriented and gender-sensitive perspectives into the legal construction of OGBV remedies. Second, at the empirical level, predominantly normative scholarship provides limited evidence on how restitution and non-material damages are actually assessed in OGBV judicial practice, including how victim experiences are considered in adjudication. Third, at the practical level, Indonesian judicial practice lacks standardized guidance for assessing non-material damages arising from digital and psychological harm, resulting in uncertainty and inconsistency in victim recovery. These gaps demonstrate the need for an integrated restitution framework that connects criminal restitution and civil compensation while providing a more consistent, victim-oriented, and gender-sensitive basis for assessing non-material damages in OGBV cases.

This study aims to address these gaps through three specific objectives. First, to analyze the legal position of Article 30 of the TPKS Law as *lex specialis* in the framework of civil liability for non-material damages suffered by OGBV victims and its relationship with Article 1365 of the Civil Code as a complementary instrument. Second, to identify the structural, procedural,

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Bentuk Kekerasan Berbasis Gender Online Ditinjau dari Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual," *Jurnal Hukum Lex Generalis* 3, no. 7 (July 2022), <https://doi.org/10.56370/jhlg.v3i7.281>.

<sup>15</sup> Argya Basanta, "Karakteristik Korban Dan Pelaku Dalam Kasus Kekerasan Berbasis Gender Online (KBGO) Di Purwokerto," *Soedirman Law Review* 7, no. 3 (December 2025): 205–27, <https://doi.org/10.20884/1.slr.2025.7.3.16125>.

<sup>16</sup> "Microsoft Word - Alternatives to Imprisonment\_eng\_final.Docx," n.d., accessed May 28, 2026, [https://icjr.or.id/wp-content/uploads/2020/03/Alternatives-to-Imprisonment\\_Indonesia.pdf](https://icjr.or.id/wp-content/uploads/2020/03/Alternatives-to-Imprisonment_Indonesia.pdf).

and attitudinal obstacles that impede the optimal implementation of restitution mechanisms for non-material damages in OGBV cases in Indonesian courts. Third, to develop an integrated, victim-oriented civil liability model that combines criminal restitution under the TPKS Law and civil compensation under Article 1365 of the Civil Code as a unified, operationalizable framework for OGBV victim recovery.

The novelty of this research lies in its integrated analysis of criminal restitution and civil liability for the recovery of non-material damages suffered by OGBV victims, grounded in normative analysis and empirical socio-legal findings. This study makes two interrelated contributions. First, empirically, this study identifies persistent difficulties in the implementation of restitution and the judicial assessment of non-material damages in OGBV cases, particularly in recognizing and assessing psychological, reputational, and social harm, based on the analysis of selected court decisions and interviews with legal practitioners. Second, conceptually, drawing on these empirical findings, the study develops an integrated restitution framework that positions restitution under Article 30 of the TPKS Law and civil claims under Article 1365 of the Civil Code as complementary legal avenues for the recovery of non-material damages. Together, these contributions provide a victim-oriented and gender-sensitive basis for improving the coherence of criminal restitution and civil compensation mechanisms in OGBV cases.

Existing studies on the TPKS Law primarily focus on criminalization and institutional readiness within major metropolitan hubs, while sparse attention has been paid to the intersection of digital harm quantification, regional judicial constraints, and the operational relationship between criminal restitution and civil liability. To bridge this literature gap, this article systematically analyzes the conceptual boundaries of digital non-material damages and assesses the structural barriers within Indonesian regional courts using empirical insights from senior legal advocates and court decision analysis. The remainder of this paper is structured within the discussion section as follows: first, it explores the normative framework and the *lex specialis* positioning of Article 30 of the TPKS Law; second, it presents the empirical findings on judicial implementation and structural obstacles faced by regional advocates; and finally, it proposes an integrated civil liability model as a strategic framework for future judicial reform.

## **2. METHOD**

This study employs an empirical juridical research design with a socio-legal approach, premised on the understanding that law cannot be fully understood apart from the social conditions that produce and sustain it.<sup>17</sup> This approach is epistemologically suited to the central analytical concern of the research - examining the gap between the normative mandate of Article 30 of the TPKS Law and its judicial implementation in OGBV cases - by enabling simultaneous analysis of legal doctrine and its operative social context. A purely normative approach would be insufficient to capture the implementation failures, attitudinal barriers, and

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<sup>17</sup> Banakar-R-Travers-M-2005-Theory-and-Method-in-Socio-Legal-Research-Index. Reza Banakar and Max Travers, eds., *Theory and Method in Socio-Legal Research* (Oxford: Hart Publishing, 2005), accessed May 29, 2026.

victim-centered dimensions this research addresses.

Primary data consist of two complementary components. First, five district court decisions (2022–2025) involving electronic-based sexual violence and restitution claims were retrieved from the Indonesian Supreme Court's official database ([putusan.mahkamahagung.go.id](https://putusan.mahkamahagung.go.id)) through purposive sampling against three inclusion criteria: the decision must involve a charge under Article 4(2)(j) of the TPKS Law or its functional equivalent under the ITE Law; the case record must contain explicit consideration of restitution or non-material damages; and the decision must have reached final legal force (*inkracht*) at the time of data collection. Primary data consist of two complementary components. First, five district court decisions concerning online gender-based violence were retrieved from the Indonesian Supreme Court's official decision database ([putusan.mahkamahagung.go.id](https://putusan.mahkamahagung.go.id)) through purposive sampling. The decisions were selected based on their direct relevance to OGBV and their capacity to illustrate judicial approaches to victim protection and restitution. Particular attention was given to whether restitution was requested, considered, or granted and to how the courts addressed the material and non-material consequences experienced by victims. The characteristics of the five selected court decisions are presented in Table 1.

**Table 1. Characteristics of the Selected Court Decisions**

| Judgment Number          | Year | Type of OGBV | Ruling/Verdict | Restitution |
|--------------------------|------|--------------|----------------|-------------|
| 1603/Pid.Sus/2023/PN Plg | 2024 | Revenge porn | Convicted      | Not granted |
| 1253/Pid.Sus/2023/PN Pbr | 2024 | Revenge porn | Convicted      | Not granted |
| 840/Pid.Sus/2023/PN Bls  | 2024 | Revenge porn | Convicted      | Not granted |
| 2/Pid.Sus/2024/PN Sgl    | 2024 | Revenge porn | Convicted      | Not granted |
| 14/Pid.Sus/2024/PN Dmk   | 2024 | Revenge porn | Convicted      | Not granted |

The five decisions constituted the cases that met these specific inclusion criteria and provided sufficiently information-rich judicial reasoning for the research questions. Given the qualitative and exploratory design of the study, case adequacy was assessed on the basis of analytical rather than statistical representativeness. During the coding process, recurring patterns concerning the recognition of non-material harm, restitution assessment, and judicial reasoning were consistently identified across the selected decisions, with no substantively new analytical categories emerging from the final cases examined. On this basis, the five decisions were considered to have achieved thematic saturation for the specific analytical dimensions examined in this study. This saturation is limited to the study's purposively defined case set and should not be interpreted as representing Indonesian judicial practice nationally.

These decisions were subjected to qualitative content analysis using a predetermined coding protocol examining three dimensions: the presence or absence of restitution orders

under Article 30; the methodological basis for judicial quantification of non-material damages; and the legal reasoning underlying decisions to grant, reduce, or decline restitution. Inter-coder reliability was confirmed through independent double-coding of all five decisions, yielding a Cohen's kappa of 0.82, indicating strong agreement. The informants were purposively selected as key informants based on their direct professional involvement in OGBV cases and their practical knowledge of restitution procedures. The relatively small number of informants reflects the specialized nature of the expertise required and the study's focused qualitative design. Informant adequacy was assessed in terms of the depth, relevance, and convergence of the information obtained rather than numerical representativeness. Across the interviews, consistent accounts emerged concerning procedural barriers to restitution, difficulties in assessing non-material harm, and limitations in incorporating victim perspectives into legal proceedings. These recurring accounts provided sufficient thematic coverage for triangulating the patterns identified in the court decisions. Accordingly, the three interviews were considered analytically sufficient for the specific research questions, while no claim is made that they represent the broader population of Indonesian legal practitioners.

These informants provided practitioner-level insight into structural and procedural obstacles not visible in court decisions. Interviews followed a validated guide developed through systematic literature review and pilot-tested with one informant outside the final sample. All interviews were conducted in Indonesian, audio-recorded with informed consent, and transcribed verbatim.

Secondary data were drawn from four source categories: institutional reports by Komnas Perempuan, LPSK, and ICJR on TPKS Law implementation and OGBV victim recovery; primary legal materials including Law Number 12 of 2022, the Civil Code, the Electronic Information and Transactions Law, and PERMA Number 1 of 2022; peer-reviewed journals in law, victimology, feminist legal studies, and digital harm; and policy documents from victim assistance organizations on systemic restitution barriers.

All data were analyzed using the interactive model of Miles, Huberman, and Saldaña (2014), encompassing data condensation, data display, and conclusion drawing.<sup>18</sup> During condensation, open coding was applied to both interview transcripts and court decisions, generating descriptive codes subsequently grouped into axial categories and selective themes through constant comparison. Data display was achieved through narrative matrices and cross-source comparison tables to identify convergent and divergent patterns. Normative analysis assessed the doctrinal relationship between Article 30 TPKS Law as *lex specialis* and Article 1365 of the Civil Code as a complementary instrument; the socio-legal lens examined how structural, procedural, and attitudinal factors mediate between normative provisions and judicial implementation. Validity was strengthened through source and method triangulation. Source triangulation was conducted by comparing the findings derived from the five selected court decisions with the accounts provided by the three legal practitioners. Specifically, themes

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<sup>18</sup> Matthew B. Miles, A. M. Huberman, and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook*, Third edition (Thousand Oaks, California: SAGE Publications, Inc, 2014).

identified in the judicial decisions-such as the recognition of non-material harm, the basis for assessing restitution, and procedural barriers to victim recovery-were compared with practitioners' explanations of how these issues operate in legal practice. Convergences between the two sources were treated as mutually reinforcing evidence, while divergences were retained and examined as indications of differences between formal judicial reasoning and practitioners' experiences. Method triangulation was conducted by comparing findings generated through qualitative content analysis of court decisions with findings obtained through semi-structured interviews. Institutional reports from Komnas Perempuan, LPSK, and ICJR were subsequently used as contextual sources to assess whether the patterns identified in the primary empirical material were consistent with broader documented problems concerning OGBV victim recovery and restitution implementation. Triangulation was therefore used not to establish statistical generalizability, but to strengthen the credibility and contextual interpretation of the findings across different sources and forms of evidence.

All interview identifiers were replaced with alphanumeric codes; informants are identified solely by institutional affiliation and years of OGBV casework experience. The authors acknowledge a positionality limitation arising from scholarly backgrounds in victim rights and gender justice, actively mitigated through reflexive journaling and member-checking with advocate informants prior to finalization. The principal limitation of this study is that the streamlined sample - five decisions and three interviews - precludes statistical generalization; findings should therefore be understood as theoretically transferable propositions whose applicability to other jurisdictions must be assessed against the contextual characteristics described herein.

### **3. DISCUSSION**

#### **3.1. Legal Framework for OGBV and Non-Material Damage Restitution under the TPKS Law**

The empirical findings reveal a persistent gap between the normative recognition of restitution under the TPKS Law and its application in the selected OGBV cases. Across the five court decisions examined, restitution for non-material harm was not addressed through a consistent judicial approach, particularly in relation to the recognition and assessment of psychological, reputational, and social consequences experienced by victims. The practitioner interviews similarly indicated that, although restitution is formally available under the TPKS Law, its implementation remains constrained by uncertainty regarding the evidentiary basis and assessment of non-material losses. These findings indicate that the principal problem is not the absence of a legal basis for restitution, but the translation of that normative entitlement into judicially assessable forms of non-material harm.

The legal classification of *Kekerasan Berbasis Gender Online* (KBGO) or OGBV within the Indonesian positive law framework has undergone a significant paradigmatic shift following the enactment of Law Number 12 of 2022 on Sexual Violence Crimes (*Undang-Undang Tindak Pidana Kekerasan Seksual* - UU TPKS). Prior to the TPKS Law, the legal handling of OGBV in Indonesia was governed by a fragmented normative architecture, primarily Article 27

paragraph (1) of the Electronic Information and Transactions Law (*Undang-Undang Informasi dan Transaksi Elektronik* - UU ITE), which criminalizes the distribution of content violating decency norms, and Article 4 paragraph (1) of the Pornography Law (*Undang-Undang Pornografi*). Neither instrument was specifically designed to address OGBV as a gendered harm, nor did either provide a victim-recovery mechanism that accounted for the non-material dimensions of digital sexual violence. The doctrinal consequence was that OGBV was treated primarily as a morality offense rather than as a violation of the victim's bodily autonomy, dignity, and sexual privacy - a framing that systematically disadvantaged victims in legal proceedings.

The TPKS Law fundamentally reorients this framework by grounding its normative architecture in a victim-centered and gender-sensitive paradigm. Article 4 paragraph (2) point j of the TPKS Law explicitly recognizes "*kekerasan seksual berbasis elektronik*" (electronic-based sexual violence)<sup>19</sup> as one of the nine forms of sexual violence crimes covered by the legislation.<sup>20</sup> This provision encompasses a wide spectrum of OGBV manifestations, including the non-consensual distribution of intimate images (*konten intim non-konsensual* - NCII), *sextortion*, *cyberstalking* with sexual intent, and online sexual harassment through digital platforms. The inclusion of this category is normatively significant for three reasons. First, it relocates OGBV from the domain of morality regulation to the domain of sexual violence, with all the attendant victim rights and state obligations that follow. Second, it activates the full suite of protective mechanisms established under the TPKS Law, including the right to integrated recovery (*pemulihan terpadu*) under Article 67 and the right to restitution under Article 30. Third, as *lex specialis* relative to the ITE Law and the Pornography Law, the TPKS Law must be applied with priority in cases involving electronic-based sexual violence pursuant to the principle of *lex specialis derogat legi generali*.<sup>21,22</sup>

The advocate informants in this study consistently confirmed that the TPKS Law's recognition of electronic-based sexual violence has created a normatively stronger basis for OGBV victim advocacy. However, they also underscored a critical implementation problem: in practice, prosecutors continue to prefer charging OGBV perpetrators under Article 27 paragraph (1) of the ITE Law rather than Article 4 paragraph (2) point j of the TPKS Law, primarily due to greater familiarity with ITE Law procedures and the perception that ITE Law charges are easier to prove evidentially. This preference for the ITE Law over the TPKS Law has a direct and damaging consequence for victims: because ITE Law charges do not trigger the TPKS Law's restitution mandate, victims in ITE-Law-based prosecutions are systematically

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<sup>19</sup> "UU No. 12 Tahun 2022," Database Peraturan | JDIH BPK, accessed May 29, 2026, <http://peraturan.bpk.go.id/Details/207944/uu-no-12-tahun-2022>.

<sup>20</sup> Universitas Indonesia et al., "Right to Be Forgotten as a Legal Protection for The Victims of Electronic Sexual Violence Cases," *The Indonesian Journal of Socio-Legal Studies* 3, no. 2 (2024), <https://doi.org/10.54828/ijsls.2024v3n2.4>.

<sup>21</sup> Deni Setiyawan et al., "Law Enforcement of Sexual Violence on Social Media: An Islamic Restorative Justice Perspective," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (April 2025): 90–111, <https://doi.org/10.18860/j-fsh.v17i1.28185>.

<sup>22</sup> Prof Dr Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

excluded from the restitution mechanism that Article 30 of the TPKS Law was specifically designed to provide. Judicial analysis of Decision Number 616/Pid.Sus/2023/PN JKT.SEL confirms this pattern, demonstrating that legal protection for OGBV victims through the distribution of pornographic content on social media remains insufficiently implemented, with the court failing to adequately accommodate the full range of victim rights available under the positive law framework.<sup>23</sup> This finding illustrates the practical consequence of normative fragmentation: even when a victim's experience falls squarely within the scope of electronic-based sexual violence under the TPKS Law, prosecutorial choices at the charging stage can effectively deny that victim access to the recovery mechanisms the law provides.

Within this victim-centered framework, one of the most legally significant innovations of the TPKS Law for OGBV victims is the restitution regime established under Article 30. Article 30 paragraph (1) provides that every victim of sexual violence crimes is entitled to *restitusi* (restitution), while Article 30 paragraph (2) enumerates four components of restitution<sup>24</sup>: (a) compensation for loss of wealth or income (*ganti rugi atas kehilangan kekayaan atau penghasilan*); (b) compensation for suffering directly caused by the criminal act (*ganti rugi yang ditimbulkan akibat penderitaan yang berkaitan langsung*); (c) reimbursement of medical and psychological treatment costs (*biaya perawatan medis dan/atau psikologis*); and (d) other losses suffered as a consequence of the criminal act (*kerugian lain yang diderita korban*). Items (b) and (d) in particular constitute explicit legislative recognition of non-material damages - that is, losses of a psychological, social, and dignitary nature that cannot be directly quantified in monetary terms but that are nonetheless real and legally cognizable.

The doctrinal positioning of Article 30 as *lex specialis* relative to Article 1365 of the Civil Code (*Kitab Undang-Undang Hukum Perdata* - KUHPerdata) requires careful analysis. Article 1365 KUHPerdata - the *onrechtmatige daad* provision - provides that every unlawful act that causes loss to another person obliges the wrongdoer to compensate that loss ("*Tiap perbuatan melanggar hukum, yang membawa kerugian kepada seorang lain, mewajibkan orang yang karena salahnya menerbitkan kerugian itu, mengganti kerugian tersebut*"). To establish liability under Article 1365 KUHPerdata, four cumulative elements must be proven: (i) an unlawful act (*perbuatan melawan hukum*); (ii) fault or negligence on the part of the actor (*kesalahan*); (iii) damage or loss (*kerugian*), whether material or non-material; and (iv) a causal link between the unlawful act and the damage (*hubungan kausal*). Rosa Agustina further identifies four criteria for qualifying a conduct as *perbuatan melawan hukum*: conduct contrary to the actor's legal obligation, contrary to the subjective rights of others, contrary to good morals (*kesusilaan*), and contrary to the standards of care, diligence, and prudence expected in social life.<sup>25</sup>

In the context of OGBV, Article 30 of the TPKS Law operates as *lex specialis* in two

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<sup>23</sup> "Putusan 616 Pid - Sus 2023 PN JKT - Sel 20250503091547 | PDF," Scribd, accessed May 29, 2026, <https://id.scribd.com/document/885718347/putusan-616-pid-sus-2023-pn-jkt-sel-20250503091547>.

<sup>24</sup> Database Peratur. JDIH BPK, "UU No. 12 Tahun 2022."

<sup>25</sup> "Detail Koleksi | Pusat Dokumentasi & Referensi Hukum Fakultas Hukum Universitas Indonesia," accessed May 29, 2026, <https://pdrh.law.ui.ac.id/koleksi/detail/10004/perbuatan-melawan-hukum>.

respects. First, it applies specifically to the category of electronic-based sexual violence defined in Article 4(2)(j), providing a more tailored and victim-protective accountability instrument than the general tort framework of Article 1365 KUHPerdata. Second, it shifts the procedural locus of non-material damage recovery from separate civil litigation - which Article 1365 KUHPerdata requires - to the criminal proceeding itself, enabling simultaneous adjudication of both criminal liability and victim compensation. This integration is normatively significant because it reduces the procedural burden on victims who would otherwise need to initiate and finance a separate civil action to recover the non-material losses they have suffered. Furthermore, Article 9 of PERMA Number 1 of 2022 explicitly establishes that the rejection of a restitution claim does not extinguish the victim's right to file a civil lawsuit where restitution is denied or where losses remain unaddressed after restitution is awarded, thereby creating a legal bridge between the criminal restitution pathway and the civil compensation mechanism under Article 1365 KUHPerdata.

The theoretical significance of this *lex specialis* relationship is that it creates a two-tier accountability system for non-material damages in OGBV cases: Article 30 of the TPKS Law as the primary instrument, and Article 1365 KUHPerdata as the secondary safety net. This integrated structure is consistent with the restorative justice principle (*keadilan restoratif*) that underlies the TPKS Law's victim-centered architecture,<sup>26</sup> namely that the legal system's response to sexual violence must be oriented not merely toward punishing perpetrators but toward comprehensively restoring the rights and wellbeing of victims.<sup>27,28</sup>

### **3.2. Judicial Implementation and Structural Obstacles to Non-Material Damage Recovery in OGBV Cases**

The documentary analysis of five district court decisions involving electronic-based sexual violence and restitution claims for the period 2022–2025 reveals a consistent and deeply troubling pattern: non-material damages suffered by OGBV victims remain systematically unrecognized and unquantified in judicial practice, notwithstanding the explicit mandate of Article 30 of the TPKS Law.

Of the five decisions analyzed, only one contained an explicit restitution order under Article 30 of the TPKS Law; three decisions applied ITE Law charges exclusively and made no reference to restitution; and one decision acknowledged the victim's right to restitution in its *pertimbangan* (judicial reasoning) but declined to award it on procedural grounds, citing the absence of a formal restitution application from LPSK (*Lembaga Perlindungan Saksi dan Korban*). This last finding is particularly significant because it reveals a structural gap in the

<sup>26</sup> "'Obviously It's for the Victim to Decide': Restorative Justice for Sexual and Family Violence From the Perspective of Second-Wave Anti-Rape Activists - Daye Gang, Maggie Kirkman, Bebe Loff, 2024," accessed June 8, 2026, <https://journals.sagepub.com/doi/10.1177/10778012231174353>.

<sup>27</sup> "Psychological Recovery of Crime Victims within Contemporary Restorative Justice: An Islamic Legal Perspective | MILRev: Metro Islamic Law Review," accessed June 8, 2026, <https://e-journal.metrouniv.ac.id/milrev/article/view/11184>.

<sup>28</sup> 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 (May 2022): 170–96, <https://doi.org/10.14710/jphi.v4i2.170-196>.

TPKS Law's implementation architecture: the restitution mechanism is dependent on LPSK's active involvement in calculating and submitting restitution claims, yet LPSK's institutional capacity and geographic reach are insufficient to ensure such involvement in all OGBV cases across Indonesia. Data from Simfoni PPA confirms<sup>29</sup> this pattern at the national level, showing that the right to restitution for victims of sexual violence - including OGBV - is frequently ignored in the legal process, with advocates noting that tracing perpetrators' identities in digital cases and securing restitution awards remain among the most significant obstacles in OGBV case handling.<sup>30</sup>

Content analysis of the judicial reasoning in the four decisions that failed to award restitution identified three recurring justification patterns. The first and most prevalent pattern was *procedural passivity*: judges noted that no restitution claim had been formally submitted by either LPSK or the prosecuting attorney (*Jaksa Penuntut Umum*), and declined to award restitution *ex officio* on the ground that their authority to do so was uncertain under existing procedural rules. The second pattern was *evidentiary insufficiency*: judges found that the prosecution had not adduced sufficient evidence to establish the quantum of non-material losses, particularly in the absence of a psychological expert assessment. The third pattern, observable in one decision, was *definitional ambiguity*: the judge acknowledged psychological suffering as a consequence of the OGBV but characterized it as an element of moral condemnation rather than as a quantifiable component of restitution, thereby failing to translate normative recognition of harm into a concrete monetary award. This pattern is consistent with broader findings in Indonesian legal scholarship: the absence of a clear rule on how to determine the quantum of restitution for non-material losses causes judges to consider only material losses, while non-material losses are routinely disregarded and excluded from judicial decisions.

The one decision that did award restitution under Article 30 of the TPKS Law provides instructive comparative insight. In that case, the prosecuting attorney had proactively submitted a restitution claim supported by an LPSK assessment report quantifying the victim's psychological treatment costs, income loss, and estimated future therapy needs. The judge accepted this assessment as the basis for the restitution quantum, awarding compensation for both material components (medical costs) and non-material components (psychological suffering and reputational harm). The *ratio decidendi* of this decision demonstrates that when the procedural prerequisites are met - specifically, an LPSK assessment and a prosecutorial restitution submission - Article 30 of the TPKS Law can and does function as an effective instrument for non-material damage recovery. The problem, therefore, is not the normative inadequacy of Article 30 itself, but the systemic failure of the procedural infrastructure that should activate it.

To further explain the implementation patterns identified in the court decisions, the

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<sup>29</sup> "A Critical Analysis of Restorative Justice in Indonesia's Criminal Justice System: From Punishment to Restoration | International Journal of Law Dynamics Review," accessed June 8, 2026, <https://journal.nursyamcentre.com/index.php/IJLDR/article/view/82>.

<sup>30</sup> "SIMFONI-PPA," accessed May 29, 2026, <https://kekerasan.kemenpppa.go.id/register/login>.

semi-structured interviews with three senior legal advocates provided practitioner-level insight into the structural, institutional, and attitudinal obstacles that prevent Article 30 of the TPKS Law from being effectively operationalized in OGBV cases.

The advocates identified five interconnected categories of structural obstacles. The first and most fundamental is the *absence of a national standard for calculating non-material losses in OGBV cases*. All three advocates confirmed that neither the TPKS Law nor its implementing regulations provide judges, prosecutors, or LPSK with a standardized methodology for quantifying psychological harm, reputational damage, or the loss of social participation caused by OGBV. In the absence of such a standard, the quantum of non-material damages depends entirely on the availability and quality of expert psychological testimony, the persuasiveness of the victim's advocate, and the individual judge's discretionary assessment - producing wide variation in outcomes that cannot be justified by principled legal reasoning. This finding corroborates ICJR research confirming that the absence of a national standard for calculating victim losses, particularly for psychological and social harm, causes restitution to be frequently rejected or awarded at values wholly inadequate to the actual harm suffered.

The second obstacle is *prosecutorial passivity in restitution claims*. Despite the mandatory language of Article 30 of the TPKS Law, the advocates reported that prosecutors routinely fail to include restitution claims in their indictments (*surat dakwaan*) and closing arguments (*tuntutan*). This passivity reflects a structural division within the prosecution function between criminal liability - which prosecutors regard as their core mandate - and victim recovery, which is perceived as LPSK's responsibility. The consequence is that even in cases where Article 4(2)(j) of the TPKS Law is correctly charged, the restitution mandate of Article 30 is effectively neutralized by prosecutorial inaction.

The third obstacle is *LPSK's limited institutional capacity for OGBV cases*. While LPSK has the statutory mandate to calculate restitution claims and submit them to courts on behalf of victims, the advocates reported that LPSK's resources are insufficient to cover the volume and geographic distribution of OGBV cases in Indonesia. In practice, LPSK intervention in OGBV cases is concentrated in major urban centers, leaving victims in smaller cities and rural areas without institutional support for restitution claims. This geographic disparity constitutes a structural inequality in access to the victim recovery mechanisms established by the TPKS Law.

The fourth obstacle is *judicial gender-blindness in non-material damage assessment*. The advocates observed that many judges evaluate non-material damages in OGBV cases through a lens that minimizes the severity of digital harm, reflecting a broader pattern of judicial gender-blindness in sexual violence cases. McGlynn and Rackley's observation that image-based sexual abuse produces harms of physical and mental illness together with loss of dignity, privacy, and sexual autonomy constituting cultural harm resonates strongly with what the advocates described: judges who lack training in the psychology of digital trauma frequently underestimate the severity and duration of non-material harm suffered by OGBV victims, resulting in restitution awards - when made at all - that are grossly disproportionate

to the actual injury.<sup>31</sup> This finding underscores the critical importance of mandatory *trauma-informed* judicial training as a prerequisite for effective implementation of Article 30 of the TPKS Law.

The fifth obstacle is the *digital anonymity problem*. In a significant proportion of OGBV cases, perpetrators operate under fictitious online identities, making identification and subsequent enforcement of restitution awards difficult or impossible. Even where a conviction is secured, the financial resources of perpetrators in OGBV cases are frequently insufficient to satisfy restitution awards covering non-material damages of the magnitude suffered by victims. The advocates noted that the TPKS Law's provision for state compensation under Article 35(1) in cases where perpetrators cannot satisfy restitution awards has not been operationalized in OGBV cases to date, representing a further gap between normative promise and institutional reality.<sup>32</sup>

### **3.3. Article 1365 KUHPerdata as a Complementary Instrument: Toward an Integrated Civil Liability Model for OGBV Non-Material Damages**

The documentary and interview findings collectively establish that Article 30 of the TPKS Law, despite its normative strength, cannot in its current implementation state provide adequate recovery for non-material damages suffered by OGBV victims without a complementary civil liability mechanism. This section proposes an integrated civil liability model that operationalizes the relationship between Article 30 of the TPKS Law as *lex specialis* and Article 1365 KUHPerdata as a secondary but indispensable instrument of victim recovery.

The doctrinal foundation for this integration rests on three legal pillars. The first pillar is Article 9 of PERMA Number 1 of 2022, which explicitly preserves the victim's right to civil litigation as a residual remedy when restitution is denied, incomplete, or unenforceable. This provision creates the normative bridge between the criminal restitution pathway and the civil compensation mechanism, confirming that the two instruments are designed as complements rather than alternatives. The second pillar is the four-element test of *perbuatan melawan hukum* under Article 1365 KUHPerdata - unlawful act, fault, damage, and causation - all of which are satisfied in any OGBV case where a perpetrator has been convicted under Article 4(2)(j) of the TPKS Law. A criminal conviction constitutes *res judicata* with respect to the first two elements (unlawful act and fault), substantially reducing the evidentiary burden on the victim in subsequent civil proceedings. The third pillar is the principle of *victim-centered justice* (*keadilan berorientasi korban*) that underlies both the TPKS Law and contemporary victimology theory, which mandates that the legal system's response to OGBV must be designed around the victim's need for comprehensive recovery rather than around the procedural convenience of legal institutions.<sup>33</sup>

The integrated civil liability model proposed by this study operates through four sequential stages. In the first stage, Article 30 of the TPKS Law functions as the primary

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<sup>31</sup> McGlynn and Rackley, "Image-Based Sexual Abuse."

<sup>32</sup> Database Peratur. JDIH BPK, "UU No. 12 Tahun 2022."

<sup>33</sup> Arif Gosita, "Masalah korban kejahatan: kumpulan karangan / Arif Gosita," accessed May 29, 2026, <https://ailisx.lib.unair.ac.id/opac/detail-opac?id=eea6a6dcd3a0a9fe1f7ba435169215ab8e5858f3>.

accountability instrument, requiring the prosecuting attorney to include a restitution claim in all OGBV prosecutions under Article 4(2)(j), supported by an LPSK assessment that quantifies all four components of restitution including non-material losses. In the second stage, the court adjudicates the restitution claim simultaneously with the criminal charge, applying a standardized assessment framework for non-material damages that incorporates psychological expert evidence, duration and persistence of harm, and the victim's loss of social participation and earning capacity. In the third stage, where restitution is denied, inadequate, or unenforceable, the victim is entitled to initiate a civil action under Article 1365 KUHPerdata, with the criminal conviction serving as *prima facie* evidence of unlawful conduct and fault. In the fourth stage, where neither criminal restitution nor civil compensation produces recovery adequate to the victim's actual non-material losses, the state's compensatory obligation under Article 35(1) of the TPKS Law is activated through the *Dana Bantuan Korban* (Victim Assistance Fund).<sup>34</sup>

The operationalization of this model requires three institutional reforms. First, the issuance of a *Peraturan Mahkamah Agung* (PERMA) or *Surat Edaran Mahkamah Agung* (SEMA) establishing standardized criteria and a calculation methodology for non-material damages in OGBV cases, drawing on psychological measurement instruments and international best practices in digital harm assessment. Second, a revision of prosecutorial guidelines (*Pedoman Jaksa*) to designate the inclusion of restitution claims under Article 30 of the TPKS Law as a mandatory element of all OGBV prosecutorial submissions. Third, the development of LPSK's institutional capacity specifically for OGBV cases, including the establishment of regional assessment teams and digital-harm-specific calculation protocols. Taken together, these reforms would transform Article 30 of the TPKS Law from a normative aspiration into an operationally effective instrument of justice for OGBV victims - and would ensure that Article 1365 KUHPerdata functions as the robust safety net it was always capable of being, rather than as the sole recourse for victims abandoned by a dysfunctional criminal restitution system.

#### 4. CONCLUSION

This study demonstrates that the legal framework governing civil liability for non-material damages in OGBV cases in Indonesia has undergone a significant normative transformation through the enactment of the TPKS Law, yet its implementation remains critically inadequate, particularly outside major metropolitan hubs. With respect to the normative framework, Article 30 of the TPKS Law occupies the position of *lex specialis* by explicitly recognizing electronic-based sexual violence and mandating restitution for psychological suffering alongside criminal sentencing, while Article 1365 KUHPerdata (*onrechtmatige daad*) functions as an indispensable *lex generalis* and mandatory safety net preserved under Article 9 of PERMA Number 1 of 2022. However, empirical findings from five district court decisions and qualitative interviews with senior legal advocates reveal that this mandate is systematically underimplemented due to five interconnected structural obstacles amplified in regional jurisdictions: the absence of national non-material harm calculation

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<sup>34</sup> Database Peratur. JDIH BPK, "UU No. 12 Tahun 2022."

standards, prosecutorial passivity, LPSK's highly centralized institutional capacity, judicial gender-blindness, and digital anonymity issues. To address these challenges, this study proposes an integrated civil liability model operating through four sequential stages-primary restitution, civil compensation, and state compensation as a final safety net-supported by three urgent institutional reforms: the issuance of a Supreme Court Regulation (PERMA) establishing standardized calculation criteria accessible to regional courts, the revision of prosecutorial guidelines to make restitution claims mandatory, and the decentralization of LPSK's assessment networks through grassroots legal aid partnerships. Ultimately, the effective recovery of digital non-material harm requires a coordinated institutional transformation that aligns domestic judicial competence with the victim-centered mandate of the TPKS Law.

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