


The Crime of Spreading Pornographic Content in Digital Media

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Abstract

Introduction: As technology continues to advance, it brings significant changes to people's lives. However, these advancements are also accompanied by threats, one of which is cybercrime. A particular form of this crime is the dissemination of pornographic content, which has substantial negative impacts, both on individual victims and on society as a whole.

Purposes of the Research: This study aims to examine the legal regulations in Indonesia governing the dissemination of pornographic content and to analyze the legal protection for victims as stipulated in Law Number 12 of 2022 concerning Sexual Violence Crimes.

Methods of the Research: The research method used is normative juridical approach, involving an analysis of relevant laws, such as the Criminal Code, the Electronic Information and Transactions Law, the Pornography Law, and the Law on Sexual Violence Crimes.

Findings of the Research: The results of the study show that the dissemination of pornographic content is regulated in articles 282, 296, and 50 of the Criminal Code, as well as Article 27 paragraph (1) and Article 45 paragraph (1) of the Electronic Information and Transaction Law, with strict criminal threats. The Pornography Law and Law Number 1 of 2024 strengthen supervision of electronic systems and administrative sanctions. The Sexual Violence Crime Act provides comprehensive protections for victims, including the right to legal services, psychological support, content removal, and protection from perpetrator threats and lawsuits.

Keywords: Legal Protection; Cybercrime; Pornography Dissemination.

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INTRODUCTION

The internet forms a new reality in human life, this reality is called the cyber world, which is a world without borders, which means that the internet brings major changes in the social, cultural and economic spheres, various conveniences and positive impacts on the development of technology and the advancement of the internet brings new threats that participate in the development of technology and the internet, the level of literacy in the cyber world is uneven at various levels of society, Often used by those who are irresponsible for personal gain, this dangerous threat is in the form of conventional crime that mutates to the cyber world, this type of crime can be called Cyber Crime¹.

Human ideas in the use of knowledge and technological advances do not always have a positive impact. The speed and ease of accessing information and its dissemination using the internet network produces bad effects, with the emergence of types of digital crimes. Technology and the internet that should be useful are no longer used properly by individuals, the speed and ease of sharing information have succeeded in becoming an

¹ Sultan Remy Syahdeini *Kejahatan dan Tindak Pidana Komputer*, (Jakarta: Pustaka Utama Grafiti, 2009). p. 2

attraction for criminals to commit actions that are prohibited under applicable regulations. Cyber Crime perpetrators easily commit actions that cause losses to their victims². One of the conventional crimes that is rampant in the cyber world is pornography, pornography can be interpreted as an explicit content in the form of images, writings or photos that in its activities contain sexual or indecent and obscene things, which are intended for the public, the meaning of perverted, obscene, or indecent is interpreted as an activity that hurts feelings that results in shame intentionally or arouses sexual arousal in the form of Squirrel.

On the internet, there are a lot of various programs, content of various forms and themes, things such as *hacking*, *carding*, and can be easily learned through illegal forum sites or video tutorials on the internet, including pornographic content, sharing or uploading information is something that is misused by criminals to commit wrong acts, Most of the pornographic content found on the internet is a form of sexual violence or a form of data leakage, (*cyber pornography*) is an act of Cyber Crime that uses the internet as the main channel medium to disseminate things in the form of sexual content³.

Sexual violence through the internet is often based on hurt feelings that result in the perpetrator disseminating pornographic videos which is also called *revenge porn*, while the form of data leakage is that the perpetrator illegally accesses the victim's internet-based storage (*cloud storage*) and disseminate it. Sexual violence that occurs in the cyber world is categorized as verbal (non-physical) sexual violence that occurs to someone who is not wanted by the victim, sexual violence in the cyber world if seen from the victim's point of view, then the victim will feel uncomfortable, and get trauma that will clearly interfere with the circumstances and psyche of the victim, This kind of thing can be concluded that the victim loses the right to a peaceful life,⁴ It was found that the pornographic content spread by the perpetrator was not only to vent his disappointment with the victim, but also the pornographic content was traded on social media. The spread of pornographic photos or videos often utilizes various social media applications such as Facebook, Twitter, Instagram, Tiktok, and others, which aims to easily convey this information which is interesting to people who surf social media, moreover the post is expected to *go viral*, let alone sexually related expressions.⁵

The dissemination of pornographic content on the internet is carried out systematically, in addition to using social media in its spread, the perpetrators of the spread also use *websites* with pornographic content, *the website* itself can be created and used by anyone, wherever and whenever they are outside of supervision, the design of a *website* with pornographic content is not only made by one person, the party who participates in the design Websites can be categorized into three groups, namely the manufacturer who designs a *website*, a distributor who has the task of distributing the *website*, and the consumer who also accesses *the website*. These parties are not necessarily in one region, often this group is in different countries, this kind of *website* often registers domains and hosts *websites* outside Indonesia with the intention of being difficult to detect.⁶

² N.C. Ayuningtyas dan Subekti, "Urgensi Perlindungan Hukum bagi Korban Pornografi Balas Dendam (Revenge Porn)," *Recidive* 10, no. 3 (2021) p. 164.

³ Agus Raharjo, *Cybercrime: Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi* (Bandung: Citra Aditya Bakti, 2002), p. 132.

⁴ Dimas Syahrul Amrulloh dan Pudji Astuti, "Tinjauan Yuridis Tentang Tindak Pidana Pelecehan Seksual Non-Fisik di Indonesia," *Novum: Jurnal Hukum* 9, no. 1 (2022): p. 4.

⁵ I. N. Fauzah, Sunardi, dan A. Kaimuddin, "Perlindungan Hukum terhadap Korban Pornografi Balas Dendam (Revenge Porn) Berdasarkan Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual," *Dinamika* 30, no. 1 (2024) p. 9175.

⁶ Alfons Zakaria, "Pelarangan Website yang Bermuatan Pornografi di Indonesia," *Risalah Hukum* 7, no. 1 (2011): p. 104.

This kind of group causes problems in many countries and makes the crime of *websites* containing pornographic content a category of *transnational crime*, or crimes involving between countries, this kind of action becomes a serious inhibiting factor in determining and mapping the parties who can be punished in the settlement of *website* cases as a place to disseminate pornographic content, in the face of a crime in the cyber world, there is a new problem, namely in relation to evidence, but with the issuance of Law Number 11 of 2008 concerning Information and Electronic Transactions which contains rules regarding activities in the cyber world along with violations and legal sanctions that participate.

METHODS OF THE RESEARCH

This study uses a legislative analysis approach to examine regulations relevant to the review of cybercrime laws on the dissemination of pornographic content, using a normative legal research type approach, where legal norms are the main object of study. The approach carried out includes legal principles to understand the applicable legal basis, legal systematics to analyze the structure and relationship between legal norms, this research uses literature sources and conceptual norms that are relevant to the issue of the dissemination of pornographic content in digital media.

RESULTS AND DISCUSSION

A. Setting Up the Spread of Pornographic Content

Indonesia is a country of law which should provide guarantees for the protection and rights of every citizen by issuing a set of rules that can answer every problem and obstacle experienced by its citizens, because the state has an obligation to every citizen, namely, to respect, to *fulfill*, and to protect), in this case as a form of guarantee for human rights in every citizen, as a *duty holder* or liabilityholder, the state is obliged to fulfill its obligations in the implementation of human rights in its country both nationally and internationally, the community in this case plays the role of a right holder or *right holder*.⁷

Acts related to the dissemination of pornographic content have been regulated in several provisions of the laws and regulations in Indonesia, in the Criminal Code, the dissemination of pornographic content is identified as an act that violates the morality regulated in Article 282 of the Criminal Code, namely acts that openly show or broadcast things that contain content that violates morality, then the act of disseminating pornographic content can identify the perpetrator as a disseminator or a person who shows publicly, or a person who deliberately enters possession and distributes abroad and makes it a livelihood, if a person meets these elements can be punished according to Article 282 of the Criminal Code.

Articles 296 and 506 of the Criminal Code discuss in detail about acts that are classified as obscene, but the purpose of this article is for perpetrators who deliberately profit from the act, which makes the dissemination of pornographic content a livelihood⁸, Articles 296 and 506 of the Criminal Code are more appropriately aimed at commercial sex brokers or people who peddle pornographic content with the intention of profiting from the content, where viewers of the content if they want to gain more experience can use the services of brokers

⁷ Farris Ghiffari, "Kewajiban Dan Tanggung Jawab Negara". (<http://www.academia.edu/16927295/234531579-Kewajiban-Dan-Tanggung-Jawab-Negara>.)

⁸ Herman, "Pengaturan dan Sistem Penyelesaian Tindak Pidana Prostitusi Online Menurut Hukum Positif," *Jurisprudentie Journal* 4, no. 2 (2017): p. 132.

or distributors of pornographic content to get commercial sex services or better known as online prostitution.

Furthermore, in Law Number 19 of 2016 jo Law Number 11 of 2008 concerning Information and Electronic Transactions regulates the prohibition of content or content in which there is moral content, the provision is explained in chapter VII of acts that are prohibited in Article 27 paragraph (1) and Article 45 paragraph (1), if seen in Article 27 paragraph (1) that anyone who deliberately and does not have the right to distribute, or electronic information can be accessed by a wide audience where the electronic information contains content that violates morality, then it is categorized as a criminal perpetrator.

Furthermore, it is emphasized in Article 45 paragraph (1) that as mentioned in Article 27 paragraph (1), anyone who fulfills it is threatened with a maximum prison sentence of six years and a maximum fine of 1,000,000,000.00 (one billion rupiah). Penalties can be imposed on perpetrators who meet the elements and violate these laws in order to have a deterrent effect and provide protection to the victim, prison sentences, according to Romli Atmasasmita, are intended as a place for the perpetrator to serve his sentence and a place to improve himself for the future.⁹ Before the amendment, Article 27 paragraph (1) of Law Number 11 of 2008 concerning information and electronic transactions, regulates the prohibition of the dissemination of information containing elements of gambling, morality, or insult to individuals or groups, with the threat of imprisonment or fines. It is emphasized in Article 27 paragraph (3) that sanctions anyone who deliberately disseminates or accesses electronic information that contains pornography.

However, with the changes that occurred through Law number 1 of 2024, the scope of the article is getting wider, with more emphasis on the dissemination of information that violates the norms of decency that apply in society, as well as providing stricter supervision of the implementation of electronic systems in order to remove content that violates the law, this amendment also regulates the addition of administrative sanctions for organizers who do not carry out surveillance or deletion against negative content, such as pornography and hate speech that can harm other parties. That way, this new regulation is expected to provide maximum legal protection to the public in the cyber world.

The provisions related to the dissemination of pornographic content in the Pornography Law are regulated in article 4, Article 29 and article 30 of Law Number 44 of 2008 concerning pornography which based on the provisions contained in Article 4, Article 29 and Article 30 of the Pornography Law, an activity can be categorized as a perpetrator of the dissemination of pornographic content can be seen from the elements of the act, whose antra doubles, disseminates and utilizes everything that falls into the category of immorality.¹⁰ Article 14 paragraph (1) of Law Number 12 of 2022 concerning the Crime of Sexual Violence explains that, any person who without permission records images or takes screenshots containing sexual content against a person without his consent or against his will, then transmits electronic information or electronic documents of a sexual nature to a party who does not want it with the intention of fulfilling sexual desires, or stalking using an electronic system with sexual intent will be subject to criminal threats.

⁹ Warisman, "Tinjauan Hukum terhadap Pelacuran dalam Dunia Maya (Cyber Prostitution) Menurut Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik," *Jurnal Wahana Inovasi* 4, no. 1 (2014): p. 206.

¹⁰ Dadin Eka Saputra, "Kajian Yuridis Terhadap Tindak Pidana Pornografi Melalui Media Sosial," *Jurnal Fakultas Hukum, Universitas Islam Kalimantan, MAB* 9, no. 2 (2017): p. 278.

The article clearly anticipates the process of spreading pornographic content, most of the pornographic content contained on social media is a result of recordings or screenshots that are beyond the will of the person who is the object of recording or screenshots, as well as stalking activities or better known as *stalking* the person who is the object of information or electronic documents for sexual purposes, which makes it harder for the victim to return to his original mental state.

B. Legal Protection According to Law Number 12 of 2022 concerning the Crime of Sexual Violence Against the Crime of Spreading Pornographic Content

The State has the obligation to provide citizens with the right to protection from violence and freedom from treatment that can degrade human dignity, which is a constitutional right mandated in the Constitution of the Republic of Indonesia in 1945. Acts of sexual violence are a form of treatment and actions that aim to degrade the dignity of a human being, which is contrary to divine and human values and can also interfere with public safety.

Every living thing has the right to be protected as an effort to recover from a loss suffered. The losses in question can be in the form of material, mental or physical losses. Protection and provision of compensation is a must obtained by the victim or individual affected by the loss of an act. Everyone who suffers losses from a crime is obliged to get participation in order to fight for their rights as victims and get justice.¹¹

In the Law on the crime of sexual violence, the rights of victims are regulated in Articles 66 to 70, Article 66 paragraph (1) states that the victim has the right to handling, protection, and recovery since the crime of sexual violence occurred. Furthermore, in the provisions listed in paragraph (2) it explains that victims with disabilities have the right to get accessibility and correct accommodation in fulfilling their rights in accordance with the Law, affirmation for the fulfillment of victims' rights which is the responsibility and obligation of the state which must be in accordance with the needs and conditions of the victim is explained in Article 67 paragraph (2).¹² The right to handle victims that must be fulfilled according to the provisions stipulated in Article 68 of the Sexual Violence Crime Law includes the victim's right to disclosure of information about the entire process and results from handling, protection to recovery, victims also have the right to legal services and strengthening in the psychological side, getting health services, services according to special needs and most importantly the right to the removal of sexually charged content in all electronic media.

Meanwhile, the right to protection is regulated in Article 69 of the Sexual Violence Crime Law, which includes access to information related to rights and protection facilities, both from threats by the perpetrator and other parties that have the potential to cause threats of violence, in addition to that the victim has the right to confidentiality of identity related to the case he experienced, and is guaranteed protection for the attitude and actions of law enforcement officials that can degrade the dignity of the victim, Victims are also entitled to protection in the field of work, such as job transfer, access to education, and political access, in addition to being protected from potential criminal charges or civil lawsuits that may arise as a result of reporting sexual violence experienced. The Law on the Crime of Sexual

¹¹ Nabila Chandra Ayuningtyas dan Subekti, "Urgensi Perlindungan Hukum bagi Korban Pornografi Balas Dendam (Revenge Porn)," *Recidive* 10, no. 3 (2021): p. 164

¹² Faizah, Azza Fitrahul, dan Muhammad Rifqi Hariri. 2022. "Pelindungan Hukum Terhadap Korban Revenge Porn Sebagai Bentuk Kekerasan Berbasis Gender Online Ditinjau Dari Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual". *Jurnal Hukum Lex Generalis* 3 (7): p. 537. <https://doi.org/10.56370/jhlg.v3i7.281>.

Violence regulates legal assistance or in the form of assistance from, witness and victim protection institutions, health workers, psychologists and other forms of assistance regulated in Article 26 paragraph (2), with this form of assistance, it is hoped that it can help victims who, in addition to experiencing material losses, also get immaterial losses in the form of physical and psychological health disturbances

Assistance to victims of revenge *pornography* from health workers, psychologists and the Witness and Victim Protection Institute in order to maintain the stability of their physical and psychological health and protect from various pressures that they will face. Even though the victim has received protection as mentioned in the Sexual Violence Crime Law, pressure from outside will continue to haunt the victim because something that should be the victim's privacy has become public consumption.¹³

CONCLUSION

Regulations regarding the dissemination of pornographic content in Indonesia are regulated in the Criminal Code and the Electronic Information and Transaction Law. Article 282 of the Criminal Code regulates the dissemination of content that violates morality, with criminal threats. Articles 296 and 506 of the Criminal Code target obscene acts related to the distribution of pornography. The Electronic Information and Transaction Law, especially Article 27 paragraph (1) and Article 45 paragraph (1), prohibit the dissemination of electronic information containing pornography, with criminal threats. Law Number 44 of 2008 also regulates the spread of pornography, including unauthorized recording and dissemination through social media. Changes in Law Number 1 of 2024 further tighten supervision of electronic systems and establish administrative sanctions for organizers who do not remove pornographic content. Law Number 12 of 2022 regulates the handling and protection and restoration of victims' rights, the right to handle victims is regulated in Article 68 of the Law on Sexual Violence which regulates the right to information disclosure of the entire process and results from handling, protection to recovery, victims also have the right to legal services and strengthening in the psychological and health services as well as special needs and content removal, The right to protection is regulated in Article 69 of the Law on Sexual Violence which regulates protection, both in the form of threats from perpetrators and other parties that have the potential to pose a threat of violence and protection of employment, access to education, political access and victims are protected from potential criminal charges or civil lawsuits that may arise as a result of reporting sexual violence experienced by them.

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¹³ Intan Nur Fauzah, Sunardi, Arfan Kamuddin " Perlindungan Hukum Terhadap Korban Pornografi Balas Dendam (*Revenge Porn*) Berdasarkan Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual, "*Jurnal Hukum Dan Keadilan*," 3, no. 1 (2023), p. 45

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