

Legal Aspects of Revenge Porn Crimes in Indonesia

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Abstract

Revenge Porn is the name given to the practice of circulating pictures of an individual in a state of undress and/or participating in sex acts. Such photographs are often circulated along with personal information identifying the individual's online accounts and disclosing where the individual lives. The method used in examining this discussion is normative in the form of literature research using literature and laws as legal material, while The result of this study is that there are regulations can protect victims from the crime of revenge Porn. There is a gap in Indonesian revenge pornography laws. To overcome the hole in norms owing to conflicting interpretations and allow law enforcers to implement the law, the Criminal Code, Pornography Law, and Electronic Transaction Information and Mass Law must be clearly formulated. According to laws governing pornographic vengeance against women

1. Intruduction

Along with the times and the era of digitalization, there are many conveniences that we get from these developments, for example, communication is getting easier. There are various kinds of communication provider platforms such as WhatsApp, Instagram, telegram, etc—as well as ease of access to existing developments. However, the many positive things due to the digitalization era did not escape the negative things that happened. The threat of crime and—criminalization is increasing because people can easily access one another, one of the crimes that occurs due to easy access to the internet is Online Gender-Based Sexual Violence (KBGO).

The crime of KBGO is an important concern in relation to developments in society in connection with technological advances in the information field.

The development of information technology in the 21st century has marked a new advancement important than the discovery of molecules in the 21st century concerning the use of information technology as a benchmark for human progress. On the other hand, it also creates access to misuse for the purpose of obtaining material benefits illegally and against the law so as to harm the interests of individuals, groups or two countries which are identified as criminal acts.

One of the modes circulating as a result of internet crime is that there is a lot of abuse of the internet and social media including harmful acts in the form of revenge pornography. Online Gender-Based Sexual Violence, abbreviated as KBGO, we often encounter on various social media platforms, one of the phenomena of Online Gender-Based Sexual Violence, namely Revenge Porn, the National Commission on Violence against Women states that revenge porn is a malicious distribution or spread of damaging content. reputation digitally with a motive of revenge. *Revenge Porn* itself threatens victims to obey the perpetrators of violence by threatening to spread pornographic content in their possession. In the aspect of crime, *Revenge porn* is defined as online-based sexual violence with the aim of revenge which is a form of threat or action and coercion on people, especially women, to spread pornographic content in the form of videos and photos without the consent of the victim¹

According to Bungin's definition of pornography images of obscene behaviour that emphasize the body and human genitalia. Its obscene, dirty, vulgar nature, makes people who see it sexually aroused. The perpetrators of *revenge porn* themselves can come from close relatives, or irresponsible persons who threaten the victim to do something ordered by threatening to spread the victim's digital recordings to the general public, as a result, many victims are depressed and choose to end their lives.

The dissemination of nude, intimate and sexualized images of individuals (overwhelmingly female), without the consent and against the wishes of those pictured, has become of late a high-profile internet-based problem. It was initially identified and discussed in the early 2000s under the rubric of 'revenge porn' and correspondingly associated with vengeful acts of humiliation perpetrated by disgruntled ex-intimates and former romantic partners. More recently, new terminology has emerged including that of "image-based abuse" and "non-consensual pornography", signaling a broader understanding of the

¹ Perangin-Angin, Ita Iya Pulina, Rahayu Rahayu, and Nuswantoro Dwiwarno. 2019. "Kewajiban Dan Tanggungjawab Negara Memberikan Perlindungan Hukum Terhadap Perempuan Korban Revenge Porn Di Indonesia." *Diponegoro Law Journal* 8(1):457-83. <http://dx.doi.org/10.30595/kosmikhukum.v21i2.9947>

problem, and the fact that it extends beyond revenge by ex-intimates to include also covertly produced images and video recordings (such as so-called “upskirting”, “downblousing” and “creepshots”) and material that has been hacked or otherwise stolen before being shared online via social networking platforms, blogs and dedicated websites²

The typical revenge porn scenario is when an ex-lover – usually a man – gets revenge by publicizing or posting intimate pictures or videos of a former lover without the former lover’s permission. Sometimes the intimate media is accompanied by personal information, such as residential addresses, email addresses, and links to other social media accounts. The exchange of images during the intimate relationship is usually accompanied by an explicit verbal agreement or mutual tacit understanding that they would be kept private. This promise is later broken when one lover becomes upset or the relationship ends. The depicted lover is either warned that the images will be disseminated, or threatened with their dissemination if certain conditions are not met. Other times, the survivor has no idea that the images have been exposed until they find out from an acquaintance, friend, or family member.³

The prevalence of sexual assault cases against children increases in every year. According to the Commission of Child Protection in Indonesia, in 2013, the number of sexual assault cases against children was 1445 cases, and not significantly different in 2014 (1423 cases). Surprisingly, in 2015 the number of cases was markedly increase become 1,718 cases³. The victims including 1443 cases in kindergarten and elementary school students, 498 cases in junior high school students, 513 cases in senior high school and 13 cases in school dropped-out children⁴

A crime or a criminal offense can basically happen to anyone and can be treated by a woman, a man, or even a child. Children who are the next generation of the nation. The protection of Indonesian children means protecting the potential of human resources and building fully Indonesians towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution. ⁵In Indonesia, sanctions regarding acts of *Revenge Porn* (*the crime of spreading sexual*

² Yar, M., & Drew, J. (2019). Image-Based Abuse, Non-Consensual Pornography, Revenge Porn: A Study of Criminalization and Crime Prevention in Australia and England & Wales. *International Journal of Cyber Criminology*, 13(2). Pg 579

³ Hamilton, A. (2018). Is justice best served cold: A transformation approach to revenge porn. *UCLA Women's LJ*, 25, 1. Pg 6

⁴ Sulisty, F., & Manap, N. A. (2018). pornography and sexual crimes towards children in Indonesia: A judicial approach. *Brawijaya Law Journal*, 5(2), 261-270. Pg 262

⁵ Annisa, S. F. (2019). A Legal Protection of Children as Victims of Sexual Human Right Accidents. *Jurnal Scientia Indonesia*, 5(2). Pg 135

content) are regulated in 3 regulations;

- The Criminal Code, (KUHP);
- Law Number 44 of 2008 concerning Pornography;
- and Law No. 10 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.

This regulation proves that the Government is serious in dealing with pornography cases where in reality there are still many victims who have not received protection. Also, the perpetrators have not been punished as they should. Currently, some regulations specifically regulate the sentencing of crimes of sexual violence and are a clear legal instrument that provides protection and legal certainty for victims of *revenge porn*. This law regulates 9 forms of sexual violence ranging from verbal sexual violence to online-based sexual violence such as revenge porn, this law is *lex specialis* and become a legal umbrella for cases of sexual violence.

This research focuses on the study examines the punishment of perpetrators of sexual violence based on the Law on Crimes of Sexual Violence in Indonesia for cases of revenge porn. This research is intended to be literature and also a further reference for journal writing related to this issue.

2. Research Method

Normative legal research method, which will examine court decisions regarding election crimes. In this research, the approaches used include the *Statute Approach* and *the Conceptual Approach*. The analysis of legal materials used in this research is analysis of normative qualitative legal materials, namely legal materials obtained after being compiled systematically, then analyzed qualitatively in the form of elaboration, so that conclusions can be drawn to achieve clarity regarding the problems to be studied. The library research results will be used to analyze legal materials, then the legal materials will be analyzed in a normative qualitative manner to answer the problems in this writing.

3. Results and Discussion

1) Internet Abuse, Motives of Revenge and Links to Revenge Porn.

Adultery is a sinful act in all religions and as a condemned behavior in all society, eventhough this behavior was done based on love, but there is disadvantages to other party. Many countries consider it as a private matter, especially in liberal countries so that no punishment can be imposed to the perpetartor of adultery. The underlying reasons why adultery is not created as a crime that there is no victim involves in this behavior, or as a victimless act, in

line with a judgement that adultery is a private matter that should not be regulated by the state. Crime commonly labeled victimless include drug use, gambling, prostitution, pornography, adultery, and sodomy [1]. Meanwhile a behavior created as a crime on ground that it cause harms to others, injury to oneself, and danger to morality. Adultery is considered illegal in 21 American States, including New York, although surveys show that while most Americans disapprove of adultery, they dont think of it as a crime. More than 60 countries around the world had done away with lawa that made adultery as a crime. Meanwhile, adultery is prohibited in Sharia or Islamic Law, so it is a criminal offence in Islamic countries such as Iran, Saudi Arabia, Afganistan, Pakistan, Bangladesh, and Somalia. Taiwan punishes adultery by up to a year in prison and it is also deemed a crime in Indonesia. ⁶

There are many crimes in cyberspace, ranging from hacking personal data and social media accounts to online-based sexual crimes, one of which is *revenge porn* or better known as sexual violence by spreading pornographic content non-consensually on the internet as a motive for revenge for perpetrators. The perpetrator is usually the person closest to the perpetrator and in cases like this the motive is because the perpetrator is hurt by the victim, the perpetrator can be his girlfriend, ex-girlfriend who does not accept the end of the relationship, or someone who cannot be identified.

In the case of EW who distributed photos of his unregistered married couple. EW often took photos of the victim's naked body and photos with him on his cell phone. The photo was also sent to the victim according to the victim's request, until the victim broke off their marriage relationship. EW felt hurt and uploaded the photo to his Facebook account with the account "EDI WOJOD". Similar but not the same, the making of pornography is carried out with the consent of both parties who are bound by a siri marriage bond. These photos were also known to the public through their Facebook account, although access was later blocked during the judicial process. The aim of carrying out revenge porn remains the same, to avenge the perpetrator's hurt. ⁷So far, the public's reaction to revenge porn has been to corner the victim (victim blaming) and embarrass the victim (slut shaming). According to the Oxford Dictionary, the notion of slut shaming is a social control that stigmatizes women because they

⁶ Rozah, U., Saefudin, Y., Barkhuizen, J., & Astuti, A. S. (2019, October). The Penal Policy on Cyber Adultery. In *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)* (pp. 394-397). Atlantis Press. Pg 394

⁷ Christianto, H. (2020). Konsep Hak Untuk Dilupakan Sebagai Pemenuhan Hak Korban Revenge Porn Berdasarkan Pasal 26 Undang-Undang Informasi dan Transaksi Elektronik. *Mimbar Hukum: Jurnal Berkala Fakultas Hukum Universitas Gadjah Mada*, 32(2), 175-192. Pg 178

behave sensually and wildly. While victim blaming is an act of blaming the victim for events that occur because these events are caused by his actions. Victims of revenge porn are mostly female, according to what was reported by the Cyber Civil Rights Initiative ⁸The perpetrators of revenge porn themselves use this as a means of control to control the victims by threatening to share the data, the victims will be told to do whatever the perpetrators say, causing trauma for the victims and lasting fear.

2) Punishment of Perpetrators of Revenge Porn Based Legitimate Sexual Violence

Punishment is an important part of criminal law, this is said because punishment is the culmination of the entire process of holding someone accountable for committing a crime. Criminal law without sentencing means declaring someone guilty without any definite consequences for his guilt. Thus, the conception of guilt has a significant influence on the imposition of punishment and the process of its implementation. If mistakes are understood as "reproachable", then here punishment is "a manifestation of this reproach" ⁹(Chairul Huda 2015).

a) Revenge Porn in the Criminal Code (Yustisia, Simatur, and Pustaka 2016):

In Article 281 of the Criminal Code, it regulates the norms of decency. By a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs shall be punished:

- whoever intentionally and openly violates decency;
- whoever intentionally and in front of other people who are there against his will violates decency

b) Law Number 19 of 2016 in conjunction with Law Number 11 of 2008 Concerning Electronic Information and Transactions (ITE), namely the importance of regulating illegal content in handling cases of online-based sexual violence through cyberspace.

Criminal liability contains both subjective and objective reproach. Subjective reproach means that the maker is obligated or deserving of reproach for the actions (crimes) that have been committed. Meanwhile, objective reproach means that if the maker commits an act that violates the law, the maker

⁸ Fatem Zahra, Abid. 2019. "Revenge Porn: Bahaya Hiperealitas Dan Kekerasan Siber Berbasis Gender." *Institute of International Studies Dept of International Relations Universitas Gadjah Mada*, no. 02. <https://iis.fisipol.ugm.ac.id/2019/07/25/revenge-porn-bahaya-hiperealitas-dan-kekerasan-siber-berbasis-gender/>

⁹ Chairul Huda, S H. 2015. *Dari'Tiada Pidana Tanpa Kesalahan', Menuju'Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan'*. Kencana.

must be subject to criminal sanctions in accordance with the applicable positive law¹⁰

The criminal liability of the parties in the misuse of Twitter social media for the distribution of cyberporn is as follows: a. Recorders and uploaders of pornographic photos and videos via social media on Twitter may be subject to Article 45 (1) of Article 27 paragraph (1) of the ITE Law. b. Sending pornographic photos or videos to other Twitter account administrators may be subject to Article 45(1). Article 27, paragraph (1) of the ITE Law Apart from that, the right to be forgotten has been included in Article 26 of the ITE Law in a comprehensive manner in terms of its substance and attainment. The meaning of the right to be forgotten has developed as part of human rights recognized by the 1945 Constitution of the Republic of Indonesia as fulfilling the need for self-existence regarding the protection of the right to personal privacy. Elucidation of Article 26 paragraph (1) of the ITE Law introduces the right to be forgotten as part of the right to privacy or personal rights with an emphasis on protecting one's interests from the publication of electronic information/documents that are detrimental to oneself. This means that if you understand the right to privacy in the Explanation to Article 26 of the UTE Amendment Law, it is still included in the scope of the right to privacy as confirmed in the ECHR which recognizes two forms, the right of publicity and the right of privacy. The regulation of personal rights in the amended ITE Law shows attention to the guarantee of personal rights, namely the right to publicity. Second, the right to privacy is still not clearly regulated in the Revised ITE Law so that the guarantee of protection for victims is unclear, especially the mechanism for fulfilling their rights. Victim protection is still limited to the presence of irrelevant electronic information/documents based on the victim's losses. The understanding of a person as a victim in the ITE Law is thus still limited to the civil, not criminal, scope. The mechanism for handling victims regarding the right to be forgotten also clearly shows the fulfillment of the losses experienced by victims. The absence of a mechanism for fulfilling the right to be forgotten in criminal cases must also be accompanied by a mechanism for fulfilling the right to be forgotten in civil cases.¹¹

¹⁰ Mudzalifah, Milla, and Puti Priyana. 2020. "Implikasi Regulasi Tindak Pidana Illegal Logging Terhadap Kelestarian Lingkungan Hidup Ditinjau Dalam Perspektif Hukum Lingkungan." *Ajudikasi: Jurnal Ilmu Hukum* 4 (2): 141-54. <https://doi.org/10.30656/ajudikasi.v4i2.2748>

¹¹ Christianto, H. (2020). Konsep Hak Untuk Dilupakan Sebagai Pemenuhan Hak Korban Revenge Porn Berdasarkan Pasal 26 Undang-Undang Informasi dan Transaksi Elektronik. *Mimbar Hukum: Jurnal Berkala Fakultas Hukum Universitas Gadjah Mada*, 32(2), 175-192 pg 190

4. Conclusion

The dissemination of pornographic material with the intention of seeking retribution can be classified as a criminal offense, commonly referred to as revenge porn. Hence, the endeavor to safeguard the rights of children is compromised by adults, families, and their immediate surroundings, including the partiality exhibited by their own parents (whether adoptive or step-parents) and the negligence of parents who provide inadequate supervision, leading to unfavorable outcomes. Criminality encompasses all modes of expression, actions, and behavior that inflict harm upon society and compromise the safety of individuals, including both those subject to legal regulations and those not yet subject to criminal statutes. In order to effectively fulfill the responsibility of guiding and safeguarding children, society relies on the presence of several institutions and organizations. The current legislation pertaining to the criminal offense of revenge pornography in Indonesia exhibit a deficiency in normative provisions. Hence, it is imperative to establish a comprehensive criminal law framework through the formulation of the Criminal Code, the Pornography Law, and the Electronic Transaction Information and Mass Law. This would effectively address the ambiguity resulting from divergent interpretations, thereby facilitating the enforcement of these laws by legal authorities. In accordance with the legislation governing criminal activities involving the dissemination of non-consensual explicit content with the intent to harm female victims.

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