

## Law Enforcement for Crime of Pornography Widespread on Social Media Based on Lex Specialis Derogat Legi Generalis

Ahmad Hidayat<sup>1</sup>, Anang Dony Irawan<sup>2</sup>

<sup>1</sup>Fakultas Hukum Universitas Muhammadiyah Surabaya, Indonesia

<sup>2</sup>Fakultas Hukum Universitas Muhammadiyah Surabaya, Indonesia

### ABSTRACT

The spread of pornography cases that are rampant on social media has resulted in an increase in immoral acts and obscenity. As in the case of the spread of Vina Garut's nasty video between a woman and three men circulating on social media. The crime of pornography is an act related to images, illustrations, photos, writings, sounds, moving images, gestures, or other forms of messages through various forms of communication media and/or public performances. Specifically, social media that contains obscenity or exploitation of sexual behavior violates the norms of decency in society. The formulation of the problem in this paper is first, how is the responsibility for the crime of pornography that spreads it through social media. Secondly, how to enforce the law against criminal acts for perpetrators of spreading pornographic content through social media.

**Keywords:** Pornography; Social Media; Dissemination

### Article History;

Received  
December 3, 2022

Revised  
February 22, 2023

Accepted  
Mei 10, 2023

### INTRODUCTION

The crime of pornography in Indonesia is a criminal act which is a serious problem for the government and often causes concern for the public. Because in Indonesia today, various pornographic images and videos can be watched very easily, one of which is on social media which is only to be watched or enjoyed so that certain elements have also developed and distributed these images. For example, we can get it anywhere and there are no restrictions on anyone, especially including one on social media which is pornographic.

As in the case of Vina Garut or called the initials VN, the judge sentenced the defendant VN to three years in prison and a fine of 1 billion Rupiah, subsidiary to three months in prison. This sentence is heavier than the previous two male defendants who were sentenced to two years and nine months in prison plus a fine of Rp. 1 billion, subsidiary to three months in prison. The basis for the judge's decision, namely VN as the defendant,

Conclusively violated Article 8 of Law Number 44 of 2008 concerning Pornography. In fact, the trial revealed that the defendant VN was a victim because she had been forced by her husband. A to do the sexual intercourse scene which was done intentionally with 2 other men, namely WL and AD.

See several theories to support and answer the problems related to this case. The judge's consideration in this case should look at considerations from a sociological perspective where the judge also considers the element of compulsion in his decision. (Media Indonesia, 2020)

The verdict of the judge's decision was too heavy for the defendant VN. In the facts of the trial, there were several things that did not become the attention and consideration of the panel of judges in the decision. First, regarding the report of VN and his team of lawyers to the police as a result of the case, which stated that his client was a victim. Second, this case occurs when the client is not old enough or underage when the incident took place. Third, there are several pieces of evidence that were not considered by the panel of judges to give the defendant a proper sentence in the decision. The three-year verdict is considered not to meet the elements of the prosecutor's demands, namely five years in prison.

This pornographic media is getting easier to be accessed through electronic and print media. It is so easy for everyone to view pornographic material through the internet, especially social media. The increasing distribution, and use of pornography, has a bad influence on the morals of the Indonesian people, thus threatening the social life of the Indonesian people. The widespread development of pornography in the community has also resulted in an increase in immoral acts and obscenity. This act includes violating the norms of decency, religious norms, and norms of decency in social life. (Humala Simangunsong, 2018)

The increasing ease of public access to information and the many opportunities to obtain various sophisticated equipment have a fairly worrying effect on morals and ethics for life. Law enforcement in a society has its own tendencies caused by the structure of the society.

Advances in technology and information have implications for social change, causing new problems for the life of society, nation and state. The development of science and technology in the field of multimedia telecommunications, Instagram, Facebook, Twitter, Path, YouTube, and so on. Acts against the law in cyberspace is very worrying. Behind the convenience of the media, its negative impact is often misused by irresponsible people. One of the misuses of social media is the dissemination of information in the form of pornographic content. (Desvi Christina Simamora, 2017)

These advances make ignorant people spread sites and content that contains pornography. Technological developments have brought about new forms of pornography. Pornoaction is a depiction of the action of body movements, the protrusion of dominant body parts giving sexual stimulation, to the act of showing breasts and genitals that are unintentional or intentional, to arouse sexual desire for those who see it. Pornomedia is the actions of sexual subjects and objects that are shown directly from one person to another so as to cause stimulation for someone.

The existence of a law that regulates pornography is a step from the government to eradicate the occurrence of pornography crimes. Efforts to prevent and control pornography are to reduce the production of pornography with the intention of being disseminated on social media (Faisal Aziz, 2016). Pornography can have an impact on the emergence of sexual crimes and have a large effect to trigger criminal

acts such as rape, obscenity, sexual harassment to sexual violence. Thus the magnitude of the effect does not only result in violations of norms or morality in society, then by enforcing the law, a more severe and firm sanctions system must be carried out.

## **METHODS**

This research method utilizes a normative legal approach by using a statutory approach. The approach to the problem carried out by library law research is research that has nothing to do with field research. In normative juridical research, it is often conceptualized as research that refers to what is written in the norms and laws and regulations that apply in society.

## **DISCUSSION AND RESULT**

### **Accountability Of Perpetrators of Pornographic Crimes Spread Through Social Media**

Criminal liability is an act which by law is threatened with punishment, contrary to the law, is carried out by a person who is guilty and that person is considered responsible for his actions. According to this school, the elements of strafbaar feit include action elements or objective elements and making elements or often called subjective elements. Therefore, when the element of action is mixed with the element of the maker, it can be concluded that the strafbaar feit is the same as the conditions for the imposition of a criminal, so that if there is a strafbaar feit, then the perpetrator can certainly be punished.

Criminal liability is related to the basis for being able to give sanctions to perpetrators of the concept of "liability". Every person who makes a mistake in criminal law can be held accountable for his actions. Liability is an obligation to provide an answer which is a calculation of something that happened and an obligation to provide recovery for losses that may be incurred.

In the Criminal Code, pornography is a crime that is classified as a crime against decency which is contained in Articles 282-283 of the Criminal Code. Based on the article, the interpretation of the meaning of pornography in society, changes that shift the meaning of the word. The shift in meaning caused by the development and spread of pornography should change the interpretation of the pornographic offense element. Law Number 44 of 2008 concerning pornography does not explicitly eliminate the crime of pornography in the Criminal Code, but still enforces the Criminal Code.

The two articles have fundamentally different arrangements related to pornography, namely Article 282 of the Criminal Code which regulates the distribution of pornography. Spread like a show. Spread within the country or abroad, or get pornographic material from abroad. Whereas Article 283 of the Criminal Code is more specific to protect minors from irresponsible parties, who submit or show writings, pictures or objects that violate decency, as well as tools to prevent or abort pregnancy. But again, the Criminal Code does not explain specifically what is meant by violating decency. Thus, it is necessary to review the opinions of experts regarding what is meant by violating decency if you want to apply the article.

Regarding access to pornography on social media that violates the law, there is the ITE Law. In this law which regulates pornography, Article 27 paragraph 1 of the ITE Law regulates. The concept of pornography here is included in information or electronic documents that violate decency. The text of the article is Article 27 paragraph (1). *"Every person intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or Electronic Documents that have content that violates decency."*

In this article, when viewed from the formulation of the article or the formulation of the preparation, then this crime is included in a special crime within the scope of ITE. The act of distributing, transmitting, or making accessible electronic information or electronic documents is an act that violates the law if there is content that violates decency in society. So if viewed from the nature of against the law or the interests to be protected, the act can be grouped into a crime of decency.

If you see in this article that the main punishment is morality, then the means is through the ITE system/network. In the explanation of the ITE Law, it explains that what is meant by "distributing" is sending and/or disseminating Electronic Information and/or Electronic Documents to many people or various parties through an electronic system. When viewed from the completion of the criminal act, the act by distributing information and or electronic documents has seen virtually electronic information/documents but because of the evidence in the ITE case it is very difficult to know/detect before anyone sees or accesses the information/electronic documents. Therefore, the "state" of a person already knowing the information through his computer should not be ignored in consideration. What is meant by "make accessible" are all actions other than distributing and transmitting through an electronic system that causes Electronic information and/or Electronic documents to be known to other parties or the public. The spread of pornography itself means that the ITE Law can only be used if in the process there is information or electronic documents that violate decency.

The pornography law also does not specifically regulate the media used in relation to pornography transactions, so that regardless of how pornography is transacted, the pornography law can be applied. So the ITE Law can be used as a basis in determining criminal acts related to pornographic transactions on the internet if the form of pornography is information or electronic documents and makes the information or electronic documents accessible through an electronic system. If it is not in the form of information or electronic documents and not through an electronic system, then the pornography law is used in pornography transactions.

### **Law Enforcement of Criminal Acts for Perpetrators of Spreading Pornographic Content Through Social Media**

The crime of pornography as a form of norms, rules, or laws formulated in legislation, both provisions in the Criminal Code or provisions in legislation outside the Criminal Code, as a form of pornography or pornographic crime and in its development it becomes a pornographic crime or porn action cyber.

Pornography and pornography are actions that have a negative impact on the behavior of the younger generation. Many children have become victims. Therefore, pornography and porno-action are categorized as criminal acts. This is not a new

problem, because Article 281, Article 282, Article 283, Article 532, and Article 533 of the Criminal Code (KUHP) have prohibited pornography and pornography.

According to Law Number 44 of 2008 concerning Pornography in Chapter 1 General Provisions Article 1 Paragraph 1, what is meant by the definition of pornography are pictures, sketches, illustrations, photos, writings, sounds, sounds, moving pictures, animations, cartoons, conversations, motions. body, or other forms of messages through various forms of communication media and/or public performances. Law Number 44 of 2008 concerning pornography does not limit the definition of the crime of pornography, but the Pornography Law only contains restrictions on pornography and defines the forms of pornographic crimes.

According to the Pornography Law, the definition of pornographic objects is broader than pornographic objects according to the Criminal Code. The Criminal Code mentions 3 (three) objects, namely writing, pictures, and objects. The items included are tools to prevent and abort pregnancy. Objects of pornography according to the Pornography Law have been expanded in such a way as to include pictures, sketches, illustrations, photographs, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media. The object of pornography contains 3 (three) properties, namely:

- a. It contains obscenity
- b. Exploits
- c. Violating the norms of decency

In one of the social media, namely Twitter, there are many accounts that contain pornographic content. There are many pornographic categories that are widespread in the Twitter social media. It is no exception that such content can be traded by the account owner to his followers (followers) who want to buy and fantasize according to the contents of the account. The forms of pornography on Twitter social media include:

- a. Explicit content

Is content that contains photos, images, videos and moving images that contain pornography that can be watched by many people so that people who watch can fantasize and enjoy vulgar scenes that contain nudity in the content.

- b. Live chat streaming

Is a live broadcast that displays nudity and exotic dances by the owner of a twitter account that can be enjoyed by many people, in this case followers of the account (Followers) and can also interact directly by sending chat to the account model.

Pornography is a crime that has long developed in Indonesia. Pornography in other words means "writing about prostitutes", from the meaning of the classical Greek word (*graphein*). Basically pornography is a euphemism and literally means something that is sold. Law enforcement is the obligation to provide an answer which is a calculation of a matter or problem that occurs and the obligation to provide remedies for losses that may arise. Meanwhile, punishment is defined as suffering that is intentionally imposed or given by the state to a person or group as a result of law or sanctions for actions that have violated the law. There are three (3) elements of law enforcement, namely: justice, certainty, and expediency. The essence of law

enforcement is law enforcement is accountability for an act committed by a person or group who has met the requirements to get legal consequences or sanctions.

In law, law enforcement is very relevant to criminal liability related to the basis for being able to provide sanctions to perpetrators of violations. In achieving three (3) things in law enforcement: justice, certainty, and expediency, the law enforcement process is closely related to accountability in it. Every person who commits a crime in criminal law can be held accountable for his actions. If law enforcement does not pay attention to accountability, it is certain that justice, benefit and legal certainty will not be achieved. Because a person cannot be held responsible for an act if that person does not commit an error that is prohibited by criminal law, it is a criminal threat. It would feel very unfair if someone had to be responsible for what he did not do. The basis for the existence of a criminal act is legality, while the basis for a person to be convicted is on the basis of error.

Error is the whole condition that provides the basis for personal reproach against the criminal. Errors determine the consequences of the actions of a person or group, namely the imposition of a crime. Errors determine the consequences of the actions of a person or group, namely the imposition of a crime. Error is the state of the soul of the maker with his actions. A person can be said to have made a mistake, if at the time he committed a criminal act, from the perspective of society, he could be reproached. The person who can be sentenced must be a normal person, or has not lost his mind, and the person is an adult. Unaccountability results in not being able to be sentenced to criminal penalties. This means that when a person is unable to take responsibility, the accountability process is stopped or discontinued. That person can only be subject to sanctions in the form of actions, but cannot be subject to criminal sanctions. Accountability that is closely related to the inner state of the maker. Therefore, there are reasons that erase errors in criminal law, namely justification reasons and excuses.

The reason that eliminates the unlawful nature of the crime is called the justification reason, and the reason that removes the guilt is called the excuse of forgiveness. The enforcement of criminal law on perpetrators of pornographic crimes according to Law Number 44 of 2008 concerning Pornography is essentially related to the ability to be responsible for criminal acts in general. This is based on the fact that Law Number 44 of 2008 concerning Pornography does not explain the ability to be responsible. In the transitional provisions, it states that, "at the time this Law comes into force, all laws and regulations governing or relating to the crime of pornography are declared to remain in effect as long as they do not conflict with this Law", Therefore regarding the enforcement of criminal law pornography is based on the provisions of the Criminal Code. In the Criminal Code, it is explained that people who cannot be held accountable for pornographic crimes are people who are disabled, immature, carry out office orders and laws. In this case, the person who can be sentenced must be a normal person, not mentally disabled or not having memory loss and the person is an adult.

Perpetrators of pornography crimes are people or groups who commit pornographic crimes, but in Law Number 44 of 2008 concerning Pornography there are still irregularities in determining the perpetrators of related pornographic crimes

as regulated in Article 8, Article 9, and Article 11 of the Law. -Invite Pornography. The intentional element contained in Article 8 of Law Number 44 of 2008 concerning Pornography is "deliberately". The element of "deliberately" is a subjective element. The subjective element that influences the determination of the perpetrator of the crime of pornography for the enforcement of his criminal law where in the examination before the trial, the public prosecutor or the so-called prosecutor is obliged to prove that the behavior and actions of the perpetrator fulfill the element of "deliberately". To find out the element of "deliberately" it must meet several criteria, namely:

- a. There is a conscious will or intention aimed at committing certain crimes
- b. There is a beginning
- c. There is an act that violates the law
- d. There are consequences for his actions

The subjective element "deliberately" is that the act committed by the defendant was carried out intentionally or the defendant was aware of the actions he had committed as a result of his actions.

Problems, such as in the case of the spread of the video nasty Vina Garut or the initials VN, are the basis of the judges' consideration in deciding cases regarding pornography which were carried out without the correct mechanism, only to the point of juridical arguments. In this case, the panel of judges only used juridical arguments through elements of the study of legislation and elements of error, not an in-depth study of the facts of the trial and other aspects such as the element of compulsion and the report of the defendant as a victim. As previously explained, judges have several arguments that should be used in deciding a case. The lack of consideration by the panel of judges in this case is in the use of sociological or subjective arguments and in-depth juridical arguments. As a result, the judge's decision becomes a problem and that there should be legal certainty, justice, and benefits for parties seeking justice are reduced.

The existence of this case is proof that the judge must explore various aspects and cannot be separated from one point of view. In short, a crime of decency can be interpreted as a form of violation/crime against moral values. So this sexual crime is only seen as a form of violation of moral values rather than being seen as a crime against humanity.

## CONCLUSION

From the discussion above, it can be concluded that:

The criminal responsibility of the perpetrators of the crime of spreading pornography, including pornography transactions on social media, the application of criminal sanctions against the perpetrators, will be closely related to proving the elements of the perpetrator's actions before the trial. This can be seen from the pornographic content.

There are several forms of pornography, according to Article 1 paragraph (1) of Law Number 44 of 2008 concerning Pornography, namely, pictures, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of

communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society. Examples of forms of pornography found on social media include: Explicit content containing pornographic content, live chat streaming on Twitter social media.

Based on Law Number 44 of 2008 concerning Pornography, Twitter social media owners or creators can be held accountable for their actions if they meet the following elements, among others. Elements of error: Deliberately, elements against the law: Without rights, Elements of action: Distributing, Transmitting, Making accessible. Object elements: Electronic Information and/or Electronic Documents which have contents that violate decency.

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